

# Data Protection and Digital Information (No. 2) Bill

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[AS AMENDED IN COMMITTEE]

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[AS AMENDED IN COMMITTEE]

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# **BILL**

TO

Make provision for the regulation of the processing of information relating to identified or identifiable living individuals; to make provision about services consisting of the use of information to ascertain and verify facts about individuals; to make provision about access to customer data and business data; to make provision about privacy and electronic communications; to make provision about services for the provision of electronic signatures, electronic seals and other trust services; to make provision about the disclosure of information to improve public service delivery; to make provision for the implementation of agreements on sharing information for law enforcement purposes; to make provision about the keeping and maintenance of registers of births and deaths; to make provision about information standards for health and social care; to establish

the Information Commission; to make provision about oversight of biometric data; and for connected purposes.

**B**E IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## Part 1

### DATA PROTECTION

#### *Definitions*

#### **1 Information relating to an identifiable living individual**

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(1) In section 3 of the Data Protection Act 2018 (referred to in this Act as “the 2018 Act”) (terms relating to the processing of personal data)—

(a) in subsection (3) (definition of “identifiable living individual”), after paragraph (b) insert—

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“(and see section 3A for provision about when information relates to an identifiable living individual).”, and(b) after that subsection insert—

- “(3A) An individual is identifiable from information “directly” if the individual can be identified without the use of additional information. 5
- (3B) An individual is identifiable from information “indirectly” if the individual can be identified only with the use of additional information.” 10

(2) In the 2018 Act, after section 3 insert—

- “3A Information relating to an identifiable living individual 15**
- (1) For the purposes of this Act, information being processed is information relating to an identifiable living individual only in cases described in subsections (2) and (3). 20
- (2) The first case is where the living individual is identifiable (as described in section 3(3)) by the controller or

processor by reasonable means at the time of the processing.

- (3) The second case is where the controller or processor knows, or ought reasonably to know, that— 5
- (a) another person will, or is likely to, obtain the information as a result of the processing, and
  - (b) the living individual will be, or is likely to be, identifiable 10  
(as described in section 3(3)) by that person by reasonable means at the time of the processing.
- (4) The reference in subsection (3) 15
- (a) to obtaining the information as a result of the processing includes obtaining the information as a result of the controller or processor carrying out the processing without 20  
implementing appropriate technical and organisational measures to mitigate the risk of the information being obtained by persons with whom

the controller or processor does not intend to share the information.

- (5) For the purposes of this section, an individual is identifiable by a person “by reasonable means” if the individual is identifiable by the person by any means that the person is reasonably likely to use. 5
- (6) For the purposes of subsection (5), whether a person is reasonably likely to use a means of identifying an individual is to be determined taking into account, among other things— 10
- (a) the time, effort and costs involved in identifying the individual by that means, and 15
- (b) the technology and other resources available to the person.”
- (3) In Article 4 of the UK GDPR (definitions)— 20
- (a) the existing text becomes paragraph 1,

- (b) in paragraph 1(1) (definition of “personal data”)—
- (i) for “identifiable natural person”, in both places it appears, substitute “identifiable living individual”, 5
  - (ii) for “that natural person” substitute “the individual”, and
  - (iii) at the end insert “(and see paragraph 2)”,
- (c) in paragraph 1, after point (1) insert— 10
- an individual is identifiable from information “directly” if the individual can be identified without the use of additional information; an individual is identifiable from information “indirectly” if the 15
- individual can be identified only with the use of additional information;”, (d) in paragraph 1, for point (5) substitute—
- “pseudonymisation” means the processing 20
- of personal data in such a manner that it becomes information relating to a living individual who is only indirectly identifiable; but personal

data is only pseudonymised if the additional information needed to identify the individual is kept separately and is subject to technical and organisational measures to ensure that the personal data is not information relating to an identified or directly identifiable living individual;”, and(e) at the end insert—

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Section 3A of the 2018 Act (information relating to an identifiable living individual) applies for the purposes of this Regulation as it applies for the purposes of that Act (and, as so applied, the references in that section to section 3(3) of that Act are to be read as references to Article 4(1)(1) of this Regulation).”(4) In consequence of the amendment made by subsection (3)(a), in section 6 of the 2018 Act (meaning of “controller”), for “4(7)” substitute “4(1)(7)”. 10 15 20

## 2 Meaning of research and statistical purposes

In Article 4 of the UK GDPR (definitions),

after paragraph 2 (inserted by  
section 1 of this Act) insert—

**References in this Regulation to the processing of personal data for the purposes of scientific research (including references to processing for “scientific research purposes”) are references to processing for the purposes of any research that can reasonably be described as scientific, whether publicly or privately funded and whether carried out as a commercial or non-commercial activity. Such references—include processing for the purposes of technological development or demonstration, fundamental research or applied research, so far as those activities can reasonably be described as scientific, but only include processing for the purposes of a study in the area of public health that can reasonably be described as scientific where the study is conducted in the public interest. References in this Regulation to the processing of personal data for the purposes of historical research (including references to processing for “historical research purposes”) include processing**

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**for the purposes of genealogical research. References in this Regulation to the processing of personal data for statistical purposes are references to processing for statistical surveys or for the production of statistical results where—the information that results from the processing is aggregate data that is not personal data, and the controller does not use the personal data processed, or the information that results from the processing, in support of measures or decisions with respect to a particular data subject to whom the personal data relates.”<sup>3</sup> Consent to processing for the purposes of scientific research**

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- (1) Article 4 of the UK GDPR (definitions) is amended as follows.
- (2) In point (11) of paragraph 1(1) (definition of “consent”), at the end insert “(and see paragraphs 7 and 8 of this Article)”.  
20
- (3) After paragraph 6 (inserted by section 2 of this Act) insert—

**A data subject’s consent is to be treated as falling within the definition of “consent” in point (11) of paragraph 1 if—it does not fall within that definition because (and only because) the consent is given to the processing of personal data for the purposes of an area of scientific research, at the time the consent is sought, it is not possible to identify fully the purposes for which personal data is to be processed, seeking consent in relation to the area of scientific research is consistent with generally recognised ethical standards relevant to the area of research, and so far as the intended purposes of the processing allow, the data subject is given the opportunity to consent only to processing for part of the research. References in this Regulation to consent given for a specific purpose (however expressed) include consent described in paragraph 7.”<sup>4</sup> Consent to law enforcement processing**

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(1) The 2018 Act is amended as follows.

(2) In section 33 (definitions), after subsection (1) insert—

“(1A) “Consent” of the data subject to the processing of personal data means a freely given, specific, informed and unambiguous indication of the data subject’s wishes by which the data subject, by a statement or by a clear affirmative action, signifies agreement to the processing of the personal data (and see section 40A).”

(3) In section 34(2) (overview of Chapter 2 of Part 3), after paragraph (a) (but before the “and” at the end of that paragraph) insert—

“(aa) section 40A makes provision about processing carried out in reliance on the consent of the data subject,”.

(4) After section 40 insert—

**“40A      Conditions for consent** 20

(1) This section is about processing of personal data that is carried

out in reliance on the consent of the data subject.

- (2) The controller must be able to demonstrate that the data subject consented to the processing. 5
- (3) If the data subject's consent is given in writing as part of a document which also concerns other matters, the request for consent must be made—
- (a) in a manner which clearly distinguishes the request from the other matters, 10
  - (b) in an intelligible and easily accessible form, and
  - (c) in clear and plain language. 15
- (4) Any part of a document described in subsection (3) which constitutes an infringement of this Part is not binding.
- (5) The data subject may withdraw the consent at any time (but the withdrawal of consent does not affect the lawfulness of 20

- processing in reliance on the consent before its withdrawal).
- (6) Processing may only be carried out in reliance on consent if—
- (a) before the consent is given, the controller or processor informs the data subject of the right to withdraw it, and 5
  - (b) it is as easy for the data subject to withdraw the consent as to give it. 10
- (7) When assessing whether consent is freely given, account must be taken of, among other things, whether the provision of a service is conditional on consent to the processing of personal data that is not necessary for the provision of that service.” 15
- (5) In section 206 (index of defined expressions), in the Table, in the entry for “consent”— 20
- (a) after “consent” insert “(to processing of personal data)”,

(b) for “Part” substitute “Parts 3 and”, and

(c) for “section” substitute  
“sections 33, 40A and”.

### *Data protection principles*

## **5 Lawfulness of processing**

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(1) The UK GDPR is amended in accordance with subsections (2) to (5).

(2) In Article 6(1) (lawful processing)—

(a) in point (e)—

(i) after “task” insert “of  
the controller”, and

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(ii) after “or” insert “a task carried out”,

(b) after that point insert—

“(ea) processing is necessary for  
the purposes of a recognised  
legitimate interest;”, and

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(c) in the words after point (f), for “Point  
(f)” substitute “Points (ea) and (f)”.

(3) In Article 6(3) (basis for processing  
etc), in the second subparagraph—

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(a) after “task” insert “of the controller”, and

(b) after “interest or” insert  
“a task carried out”.

(4) In Article 6, at the end insert—

For the purposes of paragraph 1(ea), 5  
processing is necessary for the purposes  
of a recognised legitimate interest only  
if it meets a condition in Annex 1. The  
Secretary of State may by regulations  
amend Annex 1 by—adding or varying 10  
provisions, or omitting provisions added by  
regulations made under this paragraph.  
The Secretary of State may only make  
regulations under paragraph 6 where the  
Secretary of State considers it appropriate 15  
to do so having regard to, among other  
things—the interests and fundamental  
rights and freedoms of data subjects  
which require protection of personal data,  
and where relevant, the need to provide 20  
children with special protection with regard  
to their personal data. Regulations under  
paragraph 6 are subject to the affirmative  
resolution procedure. For the purposes

of paragraph 1(f), examples of types of processing that may be processing that is necessary for the purposes of a legitimate interest include—processing that is necessary for the purposes of direct marketing, intra-group transmission of personal data (whether relating to clients, employees or other individuals) where that is necessary for internal administrative purposes, and processing that is necessary for the purposes of ensuring the security of network and information systems. In paragraph 9—“intra-group transmission” means transmission between members of a group of undertakings or between members of a group of institutions affiliated to a central body; “security of network and information systems” has the same meaning as in the Network and Information Systems Regulations 2018 (S.I. 2018/506) (see regulation 1(3)(g)).” (5) In Article 21(1) (right to object), after “point (e)” insert “, (ea)”.

- (6) Schedule 1 to this Act inserts Annex 1 to the UK GDPR.

(7) In section 8 of the 2018 Act (lawfulness of processing: public interest etc)—

(a) omit “the controller’s”,

(b) at the end of paragraph

(c), insert “or”, and

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(c) omit paragraph (e) and the “or” before it.

## 6 The purpose limitation

(1) The UK GDPR is amended in accordance with subsections (2) to (5).

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(2) In Article 5(1)(b) (purpose limitation)—

(a) after “collected” insert “(whether from the data subject or otherwise)”,

(b) after “further processed” insert “by or on behalf of a controller”, and

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(c) for the words “those purposes;” to “initial purposes” substitute “the purposes for which the controller collected the data”.

(3) In Article 5, at the end insert—

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For the avoidance of doubt, processing is not lawful by virtue only of being processing in a manner that is compatible with the purposes for which the personal data was collected.”(4) In Article 6 (lawfulness of processing), omit paragraph 4.

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(5) After Article 8 insert—

**Purpose limitation: further processing**

“Article 8A — 1. This Article is about the determination, for the purposes of Article 5(1)(b) (purpose limitation), of whether processing of personal data by or on behalf of a controller for a purpose (a “new purpose”) other than the purpose for which the controller collected the data (“the original purpose”) is processing in a manner compatible with the original purpose.

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2. In making the determination, a person must take into account, among other things—

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any link between the original purpose and the new purpose; the context in which the personal data was collected, including the

relationship between the data subject and the controller; the nature of the personal data, including whether it is a special category of personal data (see Article 9) or personal data related to criminal convictions and offences (see Article 10); the possible consequences of the intended processing for data subjects; the existence of appropriate safeguards (for example, encryption or pseudonymisation).<sup>3</sup>

Processing of personal data for a new purpose is to be treated as processing in a manner compatible with the original purpose where—

- the data subject consents to the processing of personal data for the new purpose and the new purpose is specified, explicit and legitimate, the processing is carried out in accordance with Article 84B—(i) for the purposes of scientific research or historical research,

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(ii) for the purposes  
of archiving in the  
public interest, or

(iii) for statistical purposes,

the processing is carried out for the purposes of 5  
ensuring that processing of personal data  
complies with Article 5(1) or demonstrating  
that it does so, the processing meets a  
condition in Annex 2, or the processing is  
necessary to safeguard an objective listed 10  
in Article 23(1)(c) to (j) and is authorised  
by an enactment or rule of law.<sup>4</sup> Where  
the controller collected the personal  
data based on Article 6(1)(a) (data  
subject's consent), processing for a new 15  
purpose is only processing in a manner  
compatible with the original purpose if—  
it falls within paragraph 3(a) or (c), or it  
falls within paragraph 3(d) or (e) and  
the controller cannot reasonably be 20  
expected to obtain the data subject's  
consent.<sup>5</sup> The Secretary of State may  
by regulations amend Annex 2 by—  
adding or varying provisions, or omitting

- provisions added by regulations made under this paragraph.<sup>6</sup> The Secretary of State may only make regulations under paragraph 5 adding a case to Annex 2 where the Secretary of State considers that processing in that case is necessary to safeguard an objective listed in Article 23(1)(c) to (j). 5
7. Regulations under paragraph 5 may make provision identifying processing by any means, including by reference to the controller, the data subject, the personal data or the provision of Article 6(1) relied on for the purposes of the processing. 10
8. Regulations under paragraph 5 are subject to the affirmative resolution procedure.” 15
- (6) Schedule 2 to this Act inserts Annex 2 to the UK GDPR.
- (7) The 2018 Act is amended in accordance with subsections (8) to (10). 20
- (8) In section 36(1) (the second data protection principle)—

- (a) in paragraph (a), for “on any occasion” substitute “(whether from the data subject or otherwise)”, and
  - (b) in paragraph (b)—
    - (i) after “processed” insert “by or on behalf of a controller”, and 5
    - (ii) for “it was collected” substitute “the controller collected it”.
- (9) In section 87(1) (the second data protection principle)— 10
  - (a) in paragraph (a), for “on any occasion” substitute “(whether from the data subject or otherwise)”, and
  - (b) in paragraph (b)—
    - (i) after “processed” insert “by or on behalf of a controller”, and 15
    - (ii) for “it was collected” substitute “the controller collected it”.
- (10) In paragraph 1 of Schedule 2 (exemptions etc from the UK GDPR: provisions to be adapted or restricted), omit sub-paragraph (b)(ii). 20

*Special categories of personal data***7 Elected representatives responding to requests**

In paragraph 23 of Schedule 1 to the 2018 Act (special categories of personal data: elected representatives responding to requests), in sub-paragraph (4), for “fourth day after” substitute “period of 30 days beginning with the day after”. 5

*Data subjects' rights* 10**8 Vexatious or excessive requests by data subjects**

(1) The UK GDPR is amended in accordance with subsections (2) and (3).

(2) In Article 12 (transparent information, communication and modalities for the exercise of rights of the data subject)— 15

(a) in paragraph 2, at the end insert “(or refusal is allowed under Article 12A)”, and 20

(b) in paragraph 5, omit from “Where requests” to the end.

(3) After that Article insert—

**Vexatious or excessive requests**

- “Article 12A — 1. Paragraph 2 applies where a request from a data subject under any of Articles 15 to 22 or 34 is vexatious or excessive. 5
2. The controller may— charge a reasonable fee for dealing with the request (see section 12 of the 2018 Act), or refuse to act on the request. 10
3. In any proceedings where there is an issue as to whether a request is vexatious or excessive, it is for the controller to show that it is.
4. Whether a request is vexatious or excessive must be determined having regard to the circumstances of the request, including (so far as relevant)— 15
- the nature of the request, the relationship between the data subject and the controller, the resources available to the controller, the extent to which the request repeats a previous request made by the 20

- data subject to the controller, how long ago any previous request was made, and whether the request overlaps with other requests made by the data subject to the controller. 5. Examples of requests that may be vexatious include requests that—
- 5
- are intended to cause distress, are not made in good faith, or are an abuse of process.” (4) The 2018 Act is amended in accordance with subsections (5) to (11).
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- (5) In section 12(1) (limits on fees that may be charged by controllers), in paragraph (a)—
- (a) for “12(5)” substitute “12A”, and
- (b) for “manifestly unfounded” substitute “vexatious”.
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- (6) In section 53 (manifestly unfounded or excessive requests by the data subject under Part 3)—
- (a) in the heading, for “Manifestly unfounded” substitute “Vexatious”,
- 20
- (b) at the beginning insert—
- “(A1) Subsection (1) applies where a

request from a data subject under section 45, 46, 47 or 50 is vexatious or excessive (see section 204A).”,

- (c) in subsection (1), omit from the beginning to “excessive,”, 5
- (d) omit subsection (2),
- (e) in subsection (3), for “manifestly unfounded” substitute “vexatious”,
- (f) after subsection (4) insert—  
“(4A) The Secretary of State may by regulations— 10
  - (a) require controllers of a description specified in the regulations to produce and publish guidance about the fees that they charge in accordance with subsection (1)(a), and 15
  - (b) specify what the guidance must include.”,
- (g) in subsection (5), for “subsection (4)” substitute “this section”, and 20
- (h) after subsection (5) insert—

- “(6) If, in reliance on subsection (1) (b), the controller does not take action on the request, the controller must inform the data subject of—
- (a) the reasons for not doing so, and 5
  - (b) the data subject’s right to lodge a complaint with the Commissioner.
- (7) The controller must comply with subsection (6)— 10
- (a) without undue delay, and
  - (b) in any event, before the end of the applicable time period (as to which see section 54).” 15
- (7) In section 54(1) (meaning of “applicable time period”), for “and 48(2)(b)” substitute “, 48(2)(b) and 53(7)”.
- (8) In section 94 (data subject’s right of access under Part 4)— 20
- (a) after subsection (2) insert—
- “(2A) A controller is not obliged to

provide information under this section in response to a request that is vexatious or excessive (see section 204A).”,

(b) in subsection (10), for “subsection (6)” substitute “subsections (2A) to (6)”, and 5

(c) after subsection (11) insert—

“(11A) In any proceedings where there is an issue as to whether a request is vexatious or excessive, it is for the controller to show that it is.” 10

(9) In section 95 (data subject’s right of access: supplementary), omit subsections (2) and (3).

(10) After section 204 insert— 15

**“204A Vexatious or excessive**

(1) For the purposes of this Act, whether a request is vexatious or excessive must be determined having regard to the circumstances of the request, including (so far as relevant)— 20

(a) the nature of the request,

- (b) the relationship between the person making the request (the “sender”) and the person receiving it (the “recipient”),
  - (c) the resources available to the recipient, 5
  - (d) the extent to which the request repeats a previous request made by the sender to the recipient, 10
  - (e) how long ago any previous request was made, and
  - (f) whether the request overlaps with other requests made by the sender to the recipient. 15
- (2) For the purposes of this Act, examples of requests that may be vexatious include requests that—
- (a) are intended to cause distress,
  - (b) are not made in good faith, or 20
  - (c) are an abuse of process.”

(11) In section 206 (index of defined expressions), in the Table, at the appropriate places insert—

“excessive	section	
	204A”;	5
“vexatious	section	
	204A”.	

## **9 Time limits for responding to requests by data subjects**

- (1) The UK GDPR is amended in accordance with subsections (2) and (3). 10
- (2) In Article 12 (transparent information, communication and modalities for the exercise of rights of the data subject)—
- (a) in paragraph 3, for “within one month of receipt of the request” substitute “before the end of the applicable time period (see Article 12B)”, 15
- (b) in paragraph 4, for “without delay and at the latest within one month of receipt of the request” substitute “without undue delay, and in any 20

event before the end of the applicable time period (see Article 12B),”, and

(c) in paragraph 6—

(i) after “may” insert “—

(a)”, and

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(ii) at the end insert “, and

(b) delay dealing with the request until the identity is confirmed.”

(3) After Article 12A (inserted by section 8 of this Act) insert—

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### **Meaning of “applicable time period”**

“Article 12B — 1. In Article 12, “the applicable time period” means the period of one month beginning with the relevant time, subject to paragraph 3.

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2. “The relevant time” means the latest of the following—

when the controller receives the request in question; when the controller receives the information (if any) requested in connection with a request under Article 12(6); when

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the fee (if any) charged in connection with the request under Article 12A is paid.<sup>3</sup>

The controller may, by giving notice to the data subject, extend the applicable time period by two further months where that is necessary by reason of—

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the complexity of requests made by the data subject, or the number of such requests.<sup>4</sup>

A notice under paragraph 3 must—

be given before the end of the period of one month beginning with the relevant time, and state the reasons for the delay.<sup>5</sup>

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Where the controller reasonably requires further information in order to identify the information or processing activities to which a request under Article 15 relates—

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the controller may ask the data subject to provide the further information, and the period beginning with the day on which the controller makes the request and ending with the day on which

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- the controller receives  
the information does not  
count towards—(i) the  
applicable time period, or
- (ii) the period described  
in paragraph 4(a). 5
6. An example of a case in which a  
controller may reasonably require further  
information is where the controller  
processes a large amount of information  
concerning the data subject.” 10
- (4) The 2018 Act is amended in accordance  
with subsections (5) to (7).
- (5) In section 45(5) (right of access by the  
data subject), after “delay” insert “and in  
any event before the end of the applicable  
time period (as to which see section 54)”. 15
- (6) In section 54 (meaning of “applicable  
time period” for responding to  
data subjects’ requests)— 20
- (a) in subsection (1), after “45(3)  
(b)” insert “and (5)”,
- (b) in subsection (2)—

- (i) for “1 month, or such longer period as may be specified in regulations,” substitute “one month”, and
- (ii) at the end insert “, subject to subsection (3A)”, and 5
- (c) after subsection (3) insert—
  - “(3A) The controller may, by giving notice to the data subject, extend the applicable time period by two further months where that is necessary by reason of— 10
    - (a) the complexity of requests made by the data subject, or
    - (b) the number of such requests. 15
  - (3B) A notice under subsection (3A) must—
    - (a) be given before the end of the period of one month beginning with the relevant time, and
    - (b) state the reasons for the delay. 20
  - (3C) Where the controller reasonably requires further information in

order to identify the information or processing activities to which a request under section 45(1) relates—

- (a) the controller may ask the data subject to provide the further information, and 5
  - (b) the period beginning with the day on which the controller makes the request and ending with the day on which the controller receives the information does not count towards— 10
    - (i) the applicable time period, or 15
    - (ii) the period described in subsection (3B)(a).
- (3D) An example of a case in which a controller may reasonably require further information is where the controller processes a large amount of information concerning the data subject.”, and 20

- (d) omit subsections (4) to (6).
- (7) In section 94 (right of access under Part 4)—
- (a) in subsection (14), for the definition of “the applicable time period” substitute— 5
- ““the applicable time period” means the period of one month beginning with the relevant time, subject to subsection (14A);”, and
- (b) after subsection (14) insert— 10
- “(14A) The controller may, by giving notice to the data subject, extend the applicable time period by two further months where that is necessary by reason of— 15
- (a) the complexity of requests made by the data subject, or
- (b) the number of such requests.
- (14B) A notice under subsection (14A) must— 20

- (a) be given before the end of the period of one month beginning with the relevant time, and
- (b) state the reasons for the delay.”

## **10 Information to be provided to data subjects** 5

(1) In Article 13 of the UK GDPR (information to be provided where personal data is collected from the data subject)—

(a) in paragraph 4, for “shall not apply where and insofar as” substitute “do not apply to the extent that”, and 10

(b) at the end insert—

Paragraph 3 does not apply to the extent that—the controller intends to further process the personal data—(i) for (and only for) the purposes of scientific or historical research, the purposes of archiving 15

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in the public interest or  
statistical purposes, and

- (ii) in accordance with  
Article 84B, and

providing the information is impossible or 5  
would involve a disproportionate effort.  
For the purposes of paragraph 5(b),  
whether providing information would  
involve a disproportionate effort depends  
on, among other things, the number of 10  
data subjects, the age of the personal  
data and any appropriate safeguards  
applied to the processing.”(2) In Article  
14 of the UK GDPR (information to be  
provided where personal data has not 15  
been obtained from the data subject)—  
(a) in paragraph 5—  
(i) for “shall not apply where and  
insofar as” substitute “do not  
apply to the extent that”, 20  
(ii) omit point (b),  
(iii) omit “or” at the end of point (c),  
(iv) in point (d), omit “where”, and

(v) after that point insert—

“(e) providing the information is impossible or would involve a disproportionate effort, or

(f) the obligation referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of the processing for which the personal data are intended.”

(b) at the end insert—

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- For the purposes of paragraph 5(e), whether providing information would involve a disproportionate effort depends on, among other things, the number of data subjects, the age of the personal data and any appropriate safeguards applied to the processing. A controller relying on paragraph 5(e) or (f) must take appropriate measures to protect the data subject’s rights, freedoms and legitimate interests, including by making the information available publicly.”<sup>11</sup> Data subjects’ rights to information: legal professional privilege exemption**
- (1) The 2018 Act is amended as follows. 15
- (2) In section 43 (overview and scope of Chapter 3 of Part 3: rights of the data subject in connection with law enforcement processing)—
- (a) in subsection (1)(a), for “section 44” substitute “sections 44 and 45A”, and 20
- (b) in subsection (1)(b), for “section 45” substitute “sections 45 and 45A”.

- (3) For the italic heading before section 44 substitute—

*“Data subject’s rights to information”.*

- (4) In the heading of section 44, omit “Information:”. 5
- (5) Omit the italic heading before section 45.
- (6) After that section insert—

**“45A Exemption from sections 44 and 45: legal professional privilege**

- (1) Sections 44(2) and 45(1) do not require the controller to give the data subject— 10
- (a) information in respect of which a claim to legal professional privilege or, in Scotland, confidentiality of communications could be maintained in legal proceedings, or 15
- (b) information in respect of which a duty of confidentiality is owed 20

by a professional legal adviser  
to a client of the adviser.

- (2) A controller relying on the exemption in subsection (1) must inform the data subject in writing without undue delay of—
- (a) the decision to rely on the exemption,
  - (b) the reason for the decision,
  - (c) the data subject's right to make a request to the Commissioner under section 51,
  - (d) the data subject's right to lodge a complaint with the Commissioner under section 165, and
  - (e) the data subject's right to apply to a court under section 167.
- (3) Subsection (2)(a) and (b) do not apply to the extent that complying with them would—

- (a) undermine a claim described in subsection (1)(a), or
  - (b) conflict with a duty described in subsection (1)(b).
- (4) The controller must— 5
  - (a) record the reason for a decision to rely on the exemption in subsection (1), and
  - (b) if requested to do so by the Commissioner, make the record available to the Commissioner. 10
- (5) The reference in subsection (1) to sections 44(2) and 45(1) includes sections 35 to 40 so far as their provisions correspond to the rights and obligations provided for in sections 44(2) and 45(1).” 15
- (7) In section 51 (exercise of rights through the Commissioner)—
  - (a) in subsection (1), after paragraph 20
  - (b) (but before the “or” at the end of that paragraph) insert—

- “(ba) relies on the exemption from sections 44(2) and 45(1) in section 45A (legal professional privilege),”
- (b) in subsection (2), after paragraph (a) insert—
- “(aa) where subsection (1) (ba) applies, request the Commissioner to check that the controller was entitled to rely on the exemption;”
- (c) in subsection (4), after paragraph (a) insert—
- “(aa) where subsection (1) (ba) applies, whether the Commissioner is satisfied that the controller was entitled to rely on the exemption;”, and
- (d) in subsection (6), after “(a)” insert “, (aa)”.

*Automated decision-making***12 Automated decision-making**

- (1) For Article 22 of the UK GDPR  
(automated individual decision-making,  
including profiling) substitute— 5

**“Section 4A Automated individual  
decision-making Automated  
processing and significant  
decisions**

For the purposes of Articles 10  
22B and 22C—a  
decision is based  
solely on automated  
processing if there is  
no meaningful human 15  
involvement in the taking  
of the decision, and a  
decision is a significant  
decision, in relation to a  
data subject, if—(i) it 20  
produces a legal effect  
for the data subject, or

- (ii) it has a similarly significant effect for the data subject.
- 2. When considering whether there is meaningful human involvement in the taking of a decision, a person must consider, among other things, the extent to which the decision is reached by means of profiling. 5

### **Restrictions on automated decision-making**

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- Article 22B — 1. A significant decision based entirely or partly on special categories of personal data referred to in Article 9(1) may not be taken based solely on automated processing, unless one of the following conditions is met. 15
- 2. The first condition is that the decision is based entirely on processing of personal data to which the data subject has given explicit consent. 20
  - 3. The second condition is that—
    - the decision is—(i)  
necessary for entering

into, or performing, a contract between the data subject and a controller, or

- (ii) required or authorised by law, and

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point (g) of Article 9(2) applies.<sup>4</sup> A significant decision may not be taken based solely on automated processing if the processing of personal data carried out by, or on behalf of, the decision-maker for the purposes of the decision is carried out entirely or partly in reliance on Article 6(1)(ea).

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### **Safeguards for automated decision-making**

Where a significant decision taken by or on behalf of a controller in relation to a data subject is—based entirely or partly on personal data, and based solely on automated processing, the controller must ensure that safeguards for the data subject's rights, freedoms and legitimate interests are in place which comply with paragraph 2 and any regulations under Article 22D(4).<sup>2</sup> The safeguards must consist of or include measures which—

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**provide the data subject with information about decisions described in paragraph 1 taken in relation to the data subject;enable the data subject to make representations about such decisions;enable the data subject to obtain human intervention on the part of the controller in relation to such decisions;enable the data subject to contest such decisions. Further provision about automated decision-making**

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Article 22D — 1. The Secretary of State may by regulations provide that, for the purposes of Article 22A(1)(a), there is, or is not, to be taken to be meaningful human involvement in the taking of a decision in cases described in the regulations.

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2. The Secretary of State may by regulations provide that, for the purposes of Article 22A(1)(b)(ii), a description of decision is, or is not, to be taken to have a similarly significant effect for the data subject.

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3. Regulations under paragraph 1 or 2 may amend Article 22A.
  4. The Secretary of State may by regulations make further provision about the safeguards required under Article 22C(1), including provision about what is, or is not, to be taken to satisfy a requirement under Article 22C(1) or (2). 5
  5. Regulations under paragraph 4 may amend Article 22C— 10
- by adding or varying safeguards, and by omitting provision added by regulations under that paragraph.
6. Regulations under this Article are subject to the affirmative resolution procedure.” 15
  - (2) The 2018 Act is amended in accordance with subsections (3) to (5).
  - (3) For sections 49 and 50 (law enforcement processing: automated individual decision making) substitute— 20

**“50A Automated processing and significant decisions**

(1) For the purposes of sections 50B and 50C—

- (a) a decision is based solely on automated processing if there is no meaningful human involvement in the taking of the decision, and 5
- (b) a decision is a significant decision, in relation to a data subject, if— 10
- (i) it produces an adverse legal effect for the data subject, or 15
- (ii) it has a similarly significant adverse effect for the data subject.

(2) When considering whether there is meaningful human involvement in the taking of a decision, a person must consider, among other things, 20

the extent to which the decision is reached by means of profiling.

- 50B Restrictions on automated decision-making using sensitive personal data** 5
- (1) A significant decision based entirely or partly on sensitive personal data may not be taken based solely on automated processing, unless one of the following conditions is met. 10
- (2) The first condition is that the decision is based entirely on processing of personal data to which the data subject has given explicit consent.
- (3) The second condition is that the decision is required or authorised by law. 15
- 50C Safeguards for automated decision-making**
- (1) Subject to subsection (3), where a significant decision taken by 20

or on behalf of a controller in relation to a data subject is—

(a) based entirely or partly on personal data, and

(b) based solely on automated processing,

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the controller must ensure that safeguards for the data subject's rights, freedoms and legitimate interests are in place which comply with subsection (2) and any regulations under section 50D(4).

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(2) The safeguards must consist of or include measures which—

(a) provide the data subject with information about decisions described in subsection (1) taken in relation to the data subject;

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(b) enable the data subject to make representations about such decisions;

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- (c) enable the data subject to obtain human intervention on the part of the controller in relation to such decisions;
    - (d) enable the data subject to contest such decisions. 5
- (3) Subsections (1) and (2) do not apply in relation to a significant decision if—
  - (a) exemption from those provisions is required for a reason listed in subsection (4), 10
  - (b) the controller reconsiders the decision as soon as reasonably practicable, and
  - (c) there is meaningful human involvement in the reconsideration of the decision. 15
- (4) Those reasons are—
  - (a) to avoid obstructing an official or legal inquiry, investigation or procedure; 20

- (b) to avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties; 5
  - (c) to protect public security;
  - (d) to safeguard national security;
  - (e) to protect the rights and freedoms of others.
- (5) When considering whether there is meaningful human involvement in the reconsideration of a decision, a person must consider, among other things, the extent to which the conclusion reached on reconsideration is reached by means of profiling. 10  
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- 50D Further provision about automated decision-making**
- (1) The Secretary of State may by regulations provide that, for the purposes of sections 50A(1) (a) and 50C(3)(c), there is, or is 20

not, to be taken to be meaningful human involvement in the taking or reconsideration of a decision in cases described in the regulations.

- (2) The Secretary of State may by regulations provide that, for the purposes of section 50A(1)(b)(ii), a description of decision is, or is not, to be taken to have a similarly significant adverse effect for the data subject. 5 10
- (3) Regulations under subsection (1) or (2) may amend section 50A.
- (4) The Secretary of State may by regulations make further provision about the safeguards required under section 50C(1), including provision about what is, or is not, to be taken to satisfy a requirement under section 50C(1) or (2). 15
- (5) Regulations under subsection (4) may amend section 50C— 20
- (a) by adding or varying safeguards, and

- (b) by omitting provision added by regulations under that subsection.
- (6) Regulations under this section are subject to the affirmative resolution procedure.” 5
- (4) In section 96 (intelligence services processing: right not to be subject to automated decision-making)—
  - (a) in subsection (1), for “solely on” substitute “on entirely”, 10
  - (b) in subsection (3), after “section” insert “and section 97”, and
  - (c) at the end insert—
- “(4) For the purposes of this section and section 97, a decision is based on entirely automated processing if the decision-making process does not include an opportunity for a human being to accept, reject or influence the decision.” 15 20

- (5) In section 97 (intelligence services processing: right to intervene in automated decision-making)—
- (a) in subsection (1)(a), for “solely on” substitute “on entirely”, 5
  - (b) in subsection (4)(b), for “solely on” substitute “on entirely”, and
  - (c) omit subsection (6).
- (6) Schedule 3 to this Act contains amendments consequential on this section. 10

*Obligations of controllers and processors*

### **13 General obligations**

- (1) The UK GDPR is amended in accordance with subsections (2) to (4).
- (2) In Article 24(1) (responsibility of the controller), for “appropriate technical and organisational measures” substitute “appropriate measures, including technical and organisational measures,”. 15
- (3) In Article 25 (data protection by design and by default)— 20

- (a) in paragraph 1, for “appropriate technical and organisational measures” substitute “appropriate measures, including technical and organisational measures”, and 5
  - (b) in paragraph 2, for “appropriate technical and organisational measures” substitute “appropriate measures, including technical and organisational measures,”. 10
- (4) In Article 28 (processor)—
  - (a) in paragraph 1, for “appropriate technical and organisational measures” substitute “appropriate measures, including technical and organisational measures”, 15
  - (b) in paragraph 3(e), for “appropriate technical and organisational measures” substitute “appropriate measures, including technical and organisational measures”, and 20
  - (c) in paragraph 4, for “appropriate technical and organisational

measures” substitute “appropriate measures, including technical and organisational measures”.

- (5) The 2018 Act is amended in accordance with subsections (6) to (10). 5
- (6) In section 55(3) (overview and scope of provisions about controllers and processors), omit “technical and organisational”.
- (7) In section 56 (general obligations of the controller)— 10
- (a) in subsection (1), for “appropriate technical and organisational measures” substitute “appropriate measures, including technical and organisational measures,”, and 15
- (b) in subsection (3), omit “technical and organisational”.
- (8) In section 57 (data protection by design and by default)— 20
- (a) in subsection (1), for “appropriate technical and organisational measures” substitute “appropriate

measures, including technical and organisational measures,”, and

(b) in subsection (3), for “appropriate technical and organisational measures” substitute “appropriate measures, including technical and organisational measures,”. 5

(9) In section 59(2) (processors), for “appropriate technical and organisational measures” substitute “appropriate measures, including technical and organisational measures,”. 10

(10) In section 103(2) (data protection by design), for “appropriate technical and organisational measures” substitute “appropriate measures, including technical and organisational measures,”. 15

## **14 Removal of requirement for representatives for controllers etc outside the UK** 20

(1) Omit Article 27 of the UK GDPR (representatives of controllers or processors not established in the United Kingdom).

- (2) In consequence of that revocation, in the UK GDPR—
- (a) in Article 4 omit point (17) (definition of “representative”),
  - (b) in Article 13(1)(a) (information to be provided where personal data is collected from the data subject) omit “and, where applicable, of the controller’s representative”, 5
  - (c) in Article 14(1)(a) (information to be provided where personal data is not obtained from the data subject) omit “and, where applicable, of the controller’s representative”, 10
  - (d) in Article 30 (records of processing activities)— 15
    - (i) in paragraph 1, in the words before point (a), omit “and, where applicable, the controller’s representative”, 20
    - (ii) in paragraph 1(a) omit “, the controller’s representative”,

- (iii) in paragraph 2, in the words before point (a), omit “and, where applicable, the processor’s representative”,
  - (iv) in paragraph 2(a), for “, and, where applicable, of the controller’s or the processor’s representative, and” substitute “and of”, and 5
  - (v) in paragraph 4 omit “and, where applicable, the controller’s or the processor’s representative”, 10
  - (e) in Article 31 (cooperation with the Commissioner) omit “and, where applicable, their representatives”, and
  - (f) in Article 58(1)(a) (Commissioner’s powers) omit “, and, where applicable, the controller’s or the processor’s representative”. 15
- (3) In consequence of that revocation, in the 2018 Act— 20
- (a) in section 142 (information notices) omit subsection (9),

- (b) in section 143 (information notices: restrictions) omit subsection (9),
  - (c) in section 181 (interpretation of Part 6) omit the definition of “representative”,
  - (d) in section 206 (index of defined expressions), in the Table, omit the entry for “representative (in Part 6)”, and 5
  - (e) in paragraph 41 of Schedule 1 (additional safeguards for processing of special categories of personal data etc: record of processing) omit “, or the controller’s representative,”. 10
- (4) In consequence of the amendments in subsection (3), in Schedule 2 to the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (S.I. 2016/696) (Commissioner’s enforcement powers)— 15
- (a) in paragraph 3(1), for “subsections (9) and (10)” substitute “subsection (10)”, and 20

- (b) in paragraph 4(1), for “subsections (1) and (9)” substitute “subsection (1)”.

## 15 Senior responsible individual

- (1) The UK GDPR is amended in accordance with subsections (2) and (3). 5

- (2) Before Article 28 insert—

**“Section 1A Senior responsible individual Designation of senior responsible individual**

- This Article and Articles 27B and 27C apply 10  
to a controller or processor that—is a  
public body, or carries out processing of  
personal data which, taking into account  
the nature, scope, context and purposes  
of the processing, is likely to result in a 15  
high risk to the rights and freedoms of  
individuals, other than a court or tribunal  
acting in its judicial capacity.<sup>2</sup> The  
controller or processor must designate  
one individual to be its senior responsible 20  
individual, subject to paragraph 3(b).

3. Where the controller or processor is an organisation—

a designated individual must be part of the organisation's senior management, and the controller or processor may designate two or more individuals to act jointly as its senior responsible individual where the individuals are employed part-time and share a single role within the organisation's senior management.

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4. The controller or processor must—

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ensure that the current contact details of the senior responsible individual are publicly available, and send those details to the Commissioner.

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In this Article, “senior management”, in relation to an organisation, means the individuals who play significant roles in the making of decisions about how the whole or a substantial part of its activities are to be managed or organised.

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### **Senior responsible individual's tasks**

Article 27B — 1. The senior responsible individual designated by a controller

must be responsible at least for performing the tasks listed in paragraph 2 or securing that they are performed by another person.

2. Those tasks are—

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monitoring compliance by the controller with the data protection legislation; ensuring that the controller develops, implements, reviews and updates measures to ensure its compliance with the data protection legislation; informing and advising the controller, any processor engaged by the controller and employees of the controller who carry out processing of personal data of their obligations under the data protection legislation; organising training for employees of the controller who carry out processing of personal data; dealing with complaints made to the controller in connection with the processing of personal data; dealing with personal data breaches; co-operating with the Commissioner on behalf of the controller; acting as the contact point for the Commissioner on issues relating to

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- processing of personal data.<sup>3.</sup> The senior responsible individual designated by a processor must be responsible at least for performing the tasks listed in paragraph 4 or securing that they are performed by another person. 5
4. Those tasks are—
- monitoring compliance by the processor with Articles 28, 30A and 32; co-operating with the Commissioner on behalf of the processor; acting as the contact point for the Commissioner on issues relating to processing of personal data.<sup>5.</sup> Where the performance of one of its tasks would result in a conflict of interests, the senior responsible individual must secure that the task is performed by another person. 10 15
6. In deciding whether one or more of their tasks should be performed by another person (whether alone or jointly with others) and, if so, by whom, the senior responsible individual must consider, among other things— 20

**the other person’s professional qualifications and knowledge of the data protection legislation, the resources likely to be available to the other person to carry out the task, and whether the other person is involved in day-to-day processing of personal data for the controller or processor and, if so, whether that affects the person’s ability to perform the task. Senior responsible individual’s position**

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- Article 27C — 1. A controller or processor must support its senior responsible individual in the performance of the individual’s tasks, including by providing the individual with appropriate resources.
- 15
2. A controller or processor must not dismiss or penalise its senior responsible individual for performing the individual’s tasks.
- 20
3. Where the senior responsible individual decides that one or more of its tasks should be performed by another

person, the controller or processor must ensure that the person—

has appropriate resources to perform the task, is not dismissed or penalised by the controller or processor for performing the task, and does not receive instructions about the performance of the task.<sup>4</sup> Paragraph 3(c) does not require the controller or processor to prevent instructions being given by the senior responsible individual or another person performing a task for the senior responsible individual, except where such instructions would involve a conflict of interests.

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Section 1B Processor etc”. (3) Omit Articles 37 to 39 (designation, position and tasks of data protection officer) and the section heading before Article 37.

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(4) The 2018 Act is amended in accordance with subsections (5) and (6).

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(5) After section 58 insert—

*“Senior responsible individual***58A Designation of senior responsible individual**

- (1) This section and sections 58B and 58C apply to all controllers and processors other than a court, or other judicial authority, acting in its judicial capacity. 5
- (2) The controller or processor must designate one individual to be its senior responsible individual. 10
- (3) Where the controller or processor is an organisation—
- (a) a designated individual must be part of the organisation’s senior management, and 15
  - (b) the controller or processor may designate two or more individuals to act jointly as its senior responsible individual where the individuals are employed part-time and share a single role 20

within the organisation's  
senior management.

- (4) The controller or processor must—
- (a) ensure that the current contact details of the senior responsible individual are publicly available, and
  - (b) send those details to the Commissioner.
- (5) In this section, “senior management”, in relation to an organisation, means the individuals who play significant roles in the making of decisions about how the whole or a substantial part of its activities are to be managed or organised.

## **58B Tasks of the senior responsible individual**

- (1) The senior responsible individual designated by a controller must be responsible at least for performing the tasks listed in subsection

(2) or securing that they are performed by another person.

(2) Those tasks are—

- (a) monitoring compliance by the controller with the data protection legislation; 5
- (b) ensuring that the controller develops, implements, reviews and updates measures to ensure its compliance with the data protection legislation; 10
- (c) informing and advising the controller, any processor engaged by the controller and employees of the controller who carry out processing of personal data of their obligations under the data protection legislation; 15
- (d) organising training for employees of the controller who carry out processing of personal data; 20

- (e) dealing with complaints made to the controller in connection with the processing of personal data;
  - (f) dealing with personal data breaches; 5
  - (g) co-operating with the Commissioner on behalf of the controller;
  - (h) acting as the contact point for the Commissioner on issues relating to processing of personal data. 10
- (3) The senior responsible individual designated by a processor must be responsible at least for performing the tasks listed in subsection (4) or securing that they are performed by another person. 15
- (4) Those tasks are— 20
  - (a) monitoring compliance by the processor with sections 59, 61A and 66;

- (b) co-operating with the Commissioner on behalf of the processor;
  - (c) acting as the contact point for the Commissioner on issues relating to processing of personal data. 5
- (5) Where the performance of one of its tasks would result in a conflict of interests, the senior responsible individual must secure that the task is performed by another person. 10
- (6) In deciding whether one or more of their tasks should be performed by another person (whether alone or jointly with others), and, if so, by whom, the senior responsible individual must consider, among other things— 15
  - (a) the other person’s professional qualifications and knowledge of the data protection legislation, 20

- (b) the resources likely to be available to the other person to carry out the task, and
  - (c) whether the other person is involved in day-to-day processing of personal data for the controller or processor and, if so, whether that affects the person's ability to perform the task. 5  
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- 58C Senior responsible individual's position**
  - (1) A controller or processor must support its senior responsible individual in the performance of the individual's tasks, including by providing the individual with appropriate resources. 15
  - (2) A controller or processor must not dismiss or penalise its senior responsible individual for performing the individual's tasks. 20
  - (3) Where its senior responsible individual decides that one or

more of its tasks should be performed by another person, the controller or processor must ensure that the person—

- (a) has appropriate resources to perform the task, 5
  - (b) is not dismissed or penalised by the controller or processor for performing the task, and
  - (c) does not receive instructions about the performance of the task. 10
- (4) Subsection (3)(c) does not require the controller or processor to prevent instructions being given by the senior responsible individual or another person performing a task for the senior responsible individual, except where such instructions would involve a conflict of interests. 15 20

*Processor etc”.*

- (6) Omit sections 69 to 71 (designation, position and tasks of data protection officer) and the italic heading before section 69.

## **16 Duty to keep records**

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- (1) The UK GDPR is amended in accordance with subsections (2) to (4).

- (2) Before Article 30 insert—

“Section 1C Records and co-operation with the Commissioner”. (3) Omit Article 30 (records of processing activities).

10

- (4) After that Article insert—

### **Records of processing of personal data**

In this Article—paragraphs 2 to 4, 8 and 9 apply to a controller that carries out processing of personal data which, taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of individuals, and paragraphs 5 to 9 apply to a processor that carries out such processing.

15

20

The controller must maintain appropriate records of processing of personal data carried out by or on behalf of the controller.

3. The controller's records must include at least the following information about the personal data in respect of which the controller is for the time being a controller—
- 5
- where the personal data is (including information about any personal data that is outside the United Kingdom), the purposes for which the controller is processing the personal data, the categories of person with whom the controller has shared, or intends to share, the personal data (including persons who are in third countries or international organisations), how long the controller intends to retain the personal data, whether the personal data includes special categories of personal data referred to in Article 9(1) and, if so, which categories, and whether the personal data includes personal data relating to criminal convictions and offences or related security measures referred to in Article 10(1)
- 10
- 15
- 20

and, if so, which types of such data.<sup>4</sup>

Where possible, the controller's records must include information about how it ensures that personal data is secure.

5. The processor must maintain appropriate records of its processing of personal data. 5
6. The processor's records must include at least the following information about the personal data in respect of which it is for the time being a processor— 10
  - the name and contact details of each controller on behalf of which the processor is acting, and where the personal data is (including information about any personal data that is outside the United Kingdom).<sup>7</sup> 15
  - Where possible, the processor's records must include information about how it ensures that personal data is secure.
8. A controller or processor must make the records maintained under this Article available to the Commissioner on request. 20
9. In deciding what is appropriate for the purposes of this Article, a

controller or processor must take into account, among other things—

the nature, scope, context and purposes of processing carried out by or on behalf of the controller or by the processor, the risks for the rights and freedoms of individuals arising from that processing, including the likelihood of risks arising and their severity, and the resources available to the controller or processor.”(5) The 2018 Act is amended in accordance with subsections (6) to (9). 5 10

(6) In section 42 (safeguards: sensitive processing), omit subsection (4).

(7) Before section 61 insert—

*“Records and co-operation with the Commissioner”.* 15

(8) Omit section 61 (records of processing activities).

(9) After that section insert—

**“61A Records of processing of personal data**

- (1) Each controller must maintain appropriate records of processing of personal data carried out by or on behalf of the controller. 5
- (2) The controller’s records must include at least the following information about the personal data in respect of which the controller is for the time being a controller— 10
- (a) where the personal data is (including information about any personal data that is outside the United Kingdom), 15
- (b) the purposes for which the controller is processing the personal data,
- (c) the categories of person with whom the controller has shared, or intends to share, the personal data (including persons who 20

- are in third countries or international organisations),
- (d) how long the controller intends to retain the personal data, and
  - (e) whether the personal data includes personal data described in section 35(8) and, if so, which types of such data. 5
- (3) Where possible, the controller's records must include information about how it ensures that personal data is secure. 10
- (4) Each processor must maintain appropriate records of its processing of personal data. 15
- (5) The processor's records must include at least the following information about the personal data in respect of which it is for the time being a processor— 20
- (a) the name and contact details of each controller

on behalf of which the processor is acting, and

- (b) where the personal data is (including information about any personal data that is outside the United Kingdom). 5
- (6) Where possible, the processor's records must include information about how it ensures that personal data is secure. 10
- (7) A controller or processor must make the records maintained under this section available to the Commissioner on request.
- (8) In deciding what is appropriate for the purposes of this section, a controller or processor must take into account, among other things— 15
  - (a) the nature, scope, context and purposes of processing carried out by or on behalf of the controller or by the processor, 20

- (b) the risks for the rights and freedoms of individuals arising from that processing, including the likelihood of risks arising and their severity, and 5
- (c) the resources available to the controller or processor.”

## **17 Logging of law enforcement processing**

In section 62 of the 2018 Act (logging of law enforcement processing)— 10

- (a) in subsection (2)(a), omit “justification for, and”, and
- (b) in subsection (3)(a), omit “justification for, and”.

## **18 Assessment of high risk processing**

15

- (1) The UK GDPR is amended in accordance with subsections (2) to (4).
- (2) In the heading of Section 3 of Chapter 4, for “Data protection impact assessment” substitute “Assessment of high risk processing”. 20

- (3) In Article 35 (data protection impact assessment)—
- (a) for the heading substitute “Assessment of high risk processing”,
  - (b) in paragraph 1, for “natural persons” substitute “individuals”, 5
  - (c) omit paragraphs 2 to 5,
  - (d) for paragraph 7 substitute—
- “7. The controller must produce a document recording compliance with this Article which includes at least— 10
- (a) a summary of the purposes of the processing,
  - (b) an assessment of whether the processing is necessary for those purposes, 15
  - (c) an assessment of the risks to individuals referred to in paragraph 1, and
  - (d) a description of how the controller proposes to mitigate those risks.”, 20

- (e) in paragraph 8, for “, in particular for the purposes of a data protection impact assessment” substitute “for the purposes of an assessment required by paragraph 1”, 5
  - (f) omit paragraph 9,
  - (g) in paragraph 10—
    - (i) for “a data protection impact assessment” substitute “an assessment of the envisaged processing operations on the protection of personal data”, and 10
    - (ii) omit “for the processing”, and
  - (h) in paragraph 11—
    - (i) omit “Where necessary,”, and 15
    - (ii) for “to assess if processing is performed in accordance with the data protection impact assessment” substitute “of an assessment pursuant to paragraph 1 where necessary and”. 20
- (4) In Article 57(1) (Information Commissioner’s tasks), for paragraph (k) substitute—

- “(k) produce and publish a document containing examples of types of processing which the Commissioner considers are likely to result in a high risk to the rights and freedoms of individuals (for the purposes of Articles 27A, 30A and 35);”.
- (5) The 2018 Act is amended in accordance with subsections (6) and (7).
- (6) Before section 64 insert—
- “Risk assessment and prior consultation”.*
- (7) In section 64 (data protection impact assessment)—
- (a) for the heading substitute “Assessment of high risk processing”,
- (b) in subsection (1), for “a data protection impact assessment” substitute “an assessment of the impact of the envisaged processing operations on the protection of personal data”,
- (c) omit subsection (2), and

(d) for subsection (3) substitute—

“(3) The controller must produce a document recording compliance with this section which includes at least—

- (a) a summary of the purposes of the processing, 5
- (b) an assessment of whether the processing is necessary for those purposes,
- (c) an assessment of the risks to the rights and freedoms of individuals referred to in subsection (1), and 10
- (d) a description of how the controller proposes to mitigate those risks.” 15

## **19 Consulting the Commissioner prior to processing**

- (1) Article 36 of the UK GDPR (prior consultation) is amended in accordance with subsections (2) and (3). 20

- (2) In paragraph 1—
- (a) for “shall” substitute “may”,
  - (b) for “a data protection impact assessment” substitute “an assessment”, and 5
  - (c) after “high risk” insert “to the rights and freedoms of individuals”.
- (3) In paragraph 3—
- (a) in point (d), for “data protection officer” substitute “senior responsible individual”, and 10
  - (b) in point (e) omit “data protection impact”.
- (4) Section 65 of the 2018 Act (prior consultation) is amended in accordance 15 with subsections (5) and (6).
- (5) In subsection (2)—
- (a) for “must” substitute “may”,
  - (b) for “if a data protection impact assessment prepared” substitute 20 “where an assessment”, and

(c) for “(in the absence of measures to mitigate the risk)” substitute “in the absence of measures taken by the controller to mitigate the risk”.

(6) In subsection (3)— 5

(a) for “is required to consult” substitute “consults”,

(b) omit paragraph (a) (and the “and” after it), and

(c) in paragraph (b), omit “other”. 10

## **20 General processing and codes of conduct**

In Article 41 of the UK GDPR (monitoring of approved codes of conduct)—

(a) in paragraph 4, omit the words from “, including suspension” to the end, and 15

(b) after that paragraph insert—

**If the action taken by a body under paragraph 4 consists of suspending or excluding a controller or processor from the code, the body must inform the Commissioner, giving reasons for taking that action.”<sup>21</sup>** 5  
**Law enforcement processing and codes of conduct**

(1) The 2018 Act is amended as follows.

(2) In section 55(1) (overview and scope of provisions about controllers and processors), at the end insert— 10

“(e) makes provision about codes of conduct (see section 68A).”

(3) In section 56 (general obligations of the controller), at the end insert— 15

“(4) Adherence to a code of conduct approved under section 68A may be used by a controller as a means of demonstrating compliance with the requirements of this Part.” 20

(4) In section 59 (processors), after subsection (7) insert—

- “(7A) Adherence to a code of conduct approved under section 68A may be used by a processor as a means of demonstrating sufficient guarantees as described in subsection (2).” 5
- (5) In section 66 (security of processing), at the end insert—
- “(3) Adherence to a code of conduct approved under section 68A may be used by a controller or processor as a means of demonstrating compliance with subsection (1).” 10
- (6) After section 68 insert—
- “Codes of conduct*
- 68A Codes of conduct** 15
- (1) The Commissioner must encourage expert public bodies to produce codes of conduct intended to contribute to compliance with this Part.
- (2) Under subsection (1), the Commissioner must, among other things, encourage the production 20

of codes which take account of the specific features of the various processing sectors.

- (3) For the purposes of this section—
- (a) “public body” means a body or other person whose functions are, or include, functions of a public nature, and 5
  - (b) a public body is “expert” if, in the Commissioner’s opinion, the body has the knowledge and experience needed to produce a code of conduct described in subsection (1). 10
- (4) A code of conduct described in subsection (1) may, for example, make provision with regard to— 15
- (a) lawful and fair processing;
  - (b) the collection of personal data;
  - (c) the information provided to the public and to data subjects; 20

- (d) the exercise of the rights of data subjects;
  - (e) the measures and procedures referred to in sections 56, 57 and 62; 5
  - (f) the notification of personal data breaches to the Commissioner and the communication of personal data breaches to data subjects; 10
  - (g) the transfer of personal data to third countries or international organisations;
  - (h) out-of-court proceedings and other dispute resolution procedures for resolving disputes between controllers and data subjects with regard to processing. 15
- (5) The Commissioner must encourage expert public bodies to submit codes of conduct described in subsection (1) to the Commissioner in draft. 20

- (6) Where an expert public body does so, the Commissioner must—
- (a) provide the body with an opinion on whether the code correctly reflects the requirements of this Part, 5
  - (b) decide whether to approve the code, and
  - (c) if the code is approved, register and publish the code. 10
- (7) Subsections (5) and (6) apply in relation to amendments of a code of conduct that is for the time being approved under this section as they apply in relation to a code.” 15

## **22 Obligations of controllers and processors: consequential amendments**

Schedule 4 contains amendments consequential on this group of sections.

*International transfers of personal data***23 Transfers of personal data to third countries and international organisations**

- (1) Schedule 5 amends Chapter 5 of the UK GDPR (general processing and transfers of personal data to third countries and international organisations). 5
- (2) Schedule 6 amends Chapter 5 of Part 3 of the 2018 Act (law enforcement processing and transfers of personal data to third countries and international organisations). 10
- (3) Schedule 7 contains consequential and transitional provision.

*Safeguards for processing for research etc purposes*

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**24 Safeguards for processing for research etc purposes**

- (1) The UK GDPR is amended in accordance with subsections (2) to (4).
- (2) After Chapter 8 insert— 20

## “CHAPTER 8A

### SAFEGUARDS FOR PROCESSING FOR RESEARCH, ARCHIVING OR STATISTICAL PURPOSES

#### **Research, archives and statistics**

This Chapter makes provision about the processing of personal data—for the purposes of scientific research or historical research, for the purposes of archiving in the public interest, or for statistical purposes.<sup>2</sup> Those purposes are referred to in this Chapter as “RAS purposes”. 5 10

#### **Additional requirements when processing for RAS purposes**

Personal data may only be processed for RAS purposes if—the processing consists of the collection of the personal data (whether from the data subject or otherwise), the processing is carried out in order to convert the personal data into information which can be processed in a manner which does not permit the identification of a living individual, or without the processing, the RAS purposes cannot be fulfilled.<sup>2</sup> For 15 20

the purposes of paragraph 1, processing permits the identification of a living individual only in cases described in section 3A(2) and (3) of the 2018 Act (information relating to an identifiable living individual).

5

3. Processing of personal data for RAS purposes must be carried out subject to appropriate safeguards for the rights and freedoms of the data subject.

### **Appropriate safeguards**

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Article 84C — 1. This Article makes provision about when the requirement under Article 84B(3) for processing of personal data to be carried out subject to appropriate safeguards is satisfied.

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2. The requirement is not satisfied if the processing is likely to cause substantial damage or substantial distress to a data subject to whom the personal data relates.
3. The requirement is not satisfied if the processing is carried out for the purposes of measures or decisions with respect to a particular data subject to whom the

20

personal data relates, except where the purposes for which the processing is carried out include the purposes of approved medical research.

4. The requirement is only satisfied if the safeguards include technical and organisational measures for the purpose of ensuring respect for the principle of data minimisation (see Article 5(1)(c)), such as, for example, pseudonymisation. 5 10
5. In this Article—

**“approved medical research” means**

**medical research carried out by a person who has approval to carry out that research from—a research ethics committee recognised or established by the Health Research Authority under Chapter 2 of Part 3 of the Care Act 2014, or a body appointed by any of the following for the purpose of assessing the ethics of research involving individuals—the Secretary of State, the Scottish Ministers, the Welsh Ministers or a Northern Ireland department; a relevant NHS body; United Kingdom Research and Innovation or a body that is a Research Council for the purposes of the Science and Technology Act 1965; an institution that is a research institution for the purposes of Chapter 4A of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (see section 457 of that Act); “relevant NHS**

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**body” means—an NHS trust or NHS foundation trust in England,an NHS trust or Local Health Board in Wales,a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978,the Common Services Agency for the Scottish Health Service, or any of the health and social care bodies in Northern Ireland falling within paragraphs (b) to (e) of section 1(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1 (N.I.)).Appropriate safeguards: further provision**

- Article 84D — 1. The Secretary of State may by regulations make further provision about when the requirement for appropriate safeguards under Article 84B(3) is satisfied.
2. The power under this Article includes power to amend Article 84C by adding, varying or omitting provision, except that it does not include power—

to vary or omit paragraph 1 of that Article, or to omit any of paragraphs 2 to 4 of that Article.<sup>3</sup> Regulations under this Article are subject to the affirmative resolution procedure.”

5

(3) In the heading of Chapter 9, after “relating to” insert “other”.

(4) Omit Article 89 (safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes).

10

(5) The 2018 Act is amended in accordance with subsections (6) and (7).

(6) Omit section 19 (processing for archiving, research and statistical purposes: safeguards) and the italic heading before it.

15

(7) In section 41(1) (safeguards: archiving), for “necessary” substitute “carried out”.

## **25 Section 24: consequential provision**

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(1) In the UK GDPR—

- (a) in Article 5(1)(e) (storage limitation), for “Article 89(1)” to “data subject” substitute “Article 84B”,
  - (b) in Article 9(2)(j) (processing of special categories of personal data), for “in accordance with Article 89(1) (as supplemented by section 19 of the 2018 Act)” substitute “, is carried out in accordance with Article 84B and is”, 5
  - (c) in Article 17(3)(d) (right to erasure), for “Article 89(1)” substitute “Article 84B”, and 10
  - (d) in Article 21(6) (right to object), omit “pursuant to Article 89(1)”.
- (2) In the 2018 Act— 15
- (a) in section 24(4) (manual unstructured data held by FOI public authorities), after paragraph (b) insert—
    - “(ba) Chapter 8A (safeguards for processing for research, archiving or statistical purposes);”, 20

- (b) in paragraph 4(b) of Schedule 1 (special categories of personal data and criminal convictions etc data: research etc), for “Article 89(1) of the UK GDPR (as supplemented by section 19)” substitute “Article 84B of the UK GDPR”, and 5
- (c) in Schedule 2 (exemptions etc from the UK GDPR)—
- (i) in paragraph 27(3)(a) (research and statistics), for “Article 89(1) of the UK GDPR (as supplemented by section 19)” substitute “Article 84B of the UK GDPR”, and 10
- (ii) in paragraph 28(3) (archiving), for “Article 89(1) of the UK GDPR (as supplemented by section 19)” substitute “Article 84B of the UK GDPR”. 15
- (3) In section 279(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (information for research), for “Article 89(1) of the UK GDPR (archiving in the public interest, scientific 20

or historical research and statistics)”  
substitute “Article 84A of the UK GDPR  
(research, archives and statistics)”.

### *National security*

- 26 National security exemption** **5**
- (1) The 2018 Act is amended in accordance with subsections (2) to (10).
- (2) In section 26(2)(f) (national security and defence exemption), before sub-paragraph (i) insert— **10**
- “(zi) Article 77 (right to lodge a complaint with the Commissioner);”.
- (3) In section 44 (controller’s general duties to provide information to data subject)— **15**
- (a) in subsection (4), omit paragraph (d) (grounds for restricting information provided: national security),
- (b) in subsection (5), after “restricted” insert “under subsection (4)”, and **20**

- (c) in subsection (7)(a), after “subsection (2)” insert “in reliance on subsection (4)”.  
5
- (4) In section 45 (right of access by the data subject)—
  - (a) in subsection (4), omit paragraph (d) (grounds for restricting information provided: national security),
  - (b) in subsection (5), after “restricted” insert “under subsection (4)”, and  
10
  - (c) in subsection (7)(a), after “subsection (1)” insert “in reliance on subsection (4)”.  
15
- (5) In section 48 (requests by data subject for rectification or erasure of personal data)—
  - (a) in subsection (3), omit paragraph (d) (grounds for restricting information provided: national security),
  - (b) in subsection (4)—
    - (i) for “(1)” substitute “(1)(b)(i)”, and  
20
    - (ii) after “restricted” insert “under subsection (3)”, and

- (c) in subsection (6)(a), after  
“subsection (1)(b)(i)” insert “in  
reliance on subsection (3)”.
- (6) In section 68(7) (communication  
of a personal data breach to the  
data subject: grounds for restricting  
information provided), omit  
paragraph (d) (national security). 5
- (7) In Chapter 6 of Part 3 (law enforcement  
processing: supplementary), 10  
before section 79 insert—
- “78A National security exemption**
- (1) A provision mentioned in subsection  
(2) does not apply to personal data  
processed for law enforcement  
purposes if exemption from the  
provision is required for the purposes  
of safeguarding national security. 15
- (2) The provisions are—
- (a) Chapter 2 of this Part  
(principles), except for  
the provisions listed  
in subsection (3); 20

- (b) Chapter 3 of this Part (rights of the data subject);
- (c) in Chapter 4 of this Part—
  - (i) section 67 (notification of personal data breach to the Commissioner); 5
  - (ii) section 68 (communication of personal data breach to the data subject); 10
- (d) Chapter 5 of this Part (transfers of personal data to third countries etc), except for the provisions listed in subsection (4); 15
- (e) in Part 5—
  - (i) section 119 (inspection in accordance with international obligations);
  - (ii) in Schedule 13 (other general functions of the Commissioner), 20

- paragraphs 1(1)  
(a) and (g) and 2;
- (f) in Part 6—
- (i) sections 142 to 154  
and Schedule 15 5  
(Commissioner’s notices  
and powers of entry  
and inspection);
- (ii) sections 170 to 173 10  
(offences relating to  
personal data);
- (g) in Part 7, section 187  
(representation of  
data subjects).
- (3) The provisions of Chapter 2 of this 15  
Part (principles) which are excepted  
from the list in subsection (2) are—
- (a) section 35(1) (the first data  
protection principle) so far 20  
as it requires processing of  
personal data to be lawful;

- (b) section 35(2) to (5) (lawfulness of processing and restrictions on sensitive processing);
  - (c) section 42 (safeguards: sensitive processing); 5
  - (d) Schedule 8 (conditions for sensitive processing).
- (4) The provisions of Chapter 5 of this Part (transfers of personal data to third countries etc) which are excepted from the list in subsection (2) are— 10
  - (a) the following provisions of section 73—
    - (i) subsection (1)(a) 15
      - (conditions for transfer),  
so far as it relates  
to the condition in  
subsection (2) of that  
section, and subsection 20
      - (2) (transfer must be  
necessary for a law  
enforcement purpose);

- (ii) subsections (1)(d), (5) and (6) (conditions for transfer of personal data originally made available by a member State); 5
  - (b) section 78 (subsequent transfers).”
- (8) In section 79 (national security: certificate)—
  - (a) omit subsections (1) to (3), 10
  - (b) after subsection (3) insert—
    - “(3A) Subject to subsection (5), a certificate signed by a Minister of the Crown certifying that exemption from all or any of the provisions listed in section 78A(2) is, or at any time was, required in relation to any personal data for the purposes of safeguarding national security is conclusive evidence of that fact.”, 15
    - (c) in subsection (4), for “subsection (1)” substitute “subsection (3A)— 20

- (a) may identify the personal data to which it applies by means of a general description, and
- (b) ”
- (d) in subsection (5), for “subsection (1)” substitute “subsection (3A)”, 5
- (e) in subsection (7)—
  - (i) for “a restriction falls within a general description in a certificate issued under subsection (1)” substitute “a certificate under subsection (3A) which identifies the personal data to which it applies by means of a general description applies to any personal data”, and 10 15
  - (ii) for “the restriction does not fall within that description” substitute “the certificate does not apply to the personal data in question”, 20
- (f) in subsection (8)—
  - (i) for “the restriction” substitute “the certificate”, and

- (ii) for “to fall within the general description” substitute “so to apply”,
  - (g) in subsection (10), for “subsection (1)” substitute “subsection (3A)”, 5
  - (h) in subsection (11), for “subsection (1)” substitute “subsection (3A)”,
  - (i) in subsection (12), for “subsection (1)” substitute “subsection (3A)”, and
  - (j) omit subsection (13). 10
- (9) In section 110(2) (intelligence services processing: national security)—
- (a) in paragraph (a), after “Chapter 2” insert “of this Part”,
  - (b) in paragraph (b), after “Chapter 3” insert “of this Part”, and 15
  - (c) in paragraph (c), after “Chapter 4” insert “of this Part”.
- (10) In section 186(3) (data subject’s rights etc: exceptions), after paragraph (c) insert— 20
- “(ca) in Part 3 of this Act, section 78A, and”.

(11) In section 40 of the Freedom of Information Act 2000 (personal information)—

(a) in subsection (4A)(b), for “subsection (4) of that section” substitute “section 45(4) or 78A of that Act”, and

5

(b) in subsection (5B)(d), for “subsection (4) of that section” substitute “section 45(4) or 78A of that Act”.

(12) In section 38(3A)(b) of the Freedom of Information (Scotland) Act 2002 (personal information), for “subsection (4) of that section” substitute “section 45(4) or 78A of that Act”.

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### *Intelligence services*

## **27 Joint processing by intelligence services and competent authorities**

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(1) Part 4 of the 2018 Act (intelligence services processing) is amended as follows.

(2) In section 82 (processing to which Part 4 applies)—

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(a) before subsection (1) insert—

“(A1) This Part—

(a) applies to processing of personal data by an intelligence service, and

(b) applies to processing of personal data by a qualifying competent authority where the processing is the subject of a designation notice that is for the time being in force (see sections 82A to 82E).”,

(b) in subsection (1)—

(i) after “applies” insert “only”,

(ii) in paragraph (a), for “the processing by an intelligence service” substitute “processing”, and

(iii) in paragraph (b), for “the processing by an intelligence service” substitute “processing”,

(c) after subsection (2) insert—

“(2A) In this Part—

“competent authority” has the same meaning as in Part 3;

“qualifying competent authority” means a competent authority specified or described in regulations made by the Secretary of State.”, and

5

(d) after subsection (3) insert—

“(4) Regulations under this section are subject to the affirmative resolution procedure.”

10

(3) After section 82 insert—

**“82A Designation of processing by a qualifying competent authority**

(1) For the purposes of this Part, the Secretary of State may give a notice designating processing of personal data by a qualifying competent authority (a “designation notice”) where—

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(a) an application for designation of the processing is

made in accordance  
with this section, and

- (b) the Secretary of State considers that designation of the processing is required for the purposes of safeguarding national security. 5
- (2) The Secretary of State may only designate processing by a qualifying competent authority that is carried out by the authority as a joint controller with at least one intelligence service. 10
- (3) The Secretary of State may not designate processing by a qualifying competent authority that consists of the transfer of personal data to— 15
- (a) a country or territory outside the United Kingdom, or
- (b) an international organisation.
- (4) A designation notice must— 20
- (a) specify or describe the processing and qualifying

- competent authority that  
are designated, and
- (b) be given to the applicants  
for the designation (and  
see also section 82D). 5
- (5) An application for designation of  
processing of personal data by  
a qualifying competent authority  
must be made jointly by—
- (a) the qualifying competent 10  
authority, and
- (b) the intelligence service  
with which the processing  
is to be carried out.
- (6) An application may be made in 15  
respect of more than one qualifying  
competent authority and in  
respect of processing with more  
than one intelligence service.
- (7) The application must— 20

- (a) describe the processing, including the intended purposes and means of processing, and
    - (b) explain why the applicants consider that designation is required for the purposes of safeguarding national security. 5
  - (8) Before giving a designation notice, the Secretary of State must consult the Commissioner. 10
  - (9) In this section, “joint controller”, in relation to processing of personal data, means a controller whose responsibilities for compliance with this Part in relation to the processing are determined in an arrangement under section 104. 15
- 82B Duration of designation notice**
- (1) A designation notice must state when it comes into force. 20
  - (2) A designation notice ceases to be in force at the earliest of the following times—

- (a) at the end of the period of 5 years beginning with the day on which it comes into force;
    - (b) (if relevant) at the end of a shorter period specified in the notice; 5
    - (c) when the notice is withdrawn under section 82C.
  - (3) The Secretary of State may give a further designation notice in respect of processing that is, or has been, the subject of a previous designation notice. 10
- 82C Review and withdrawal of designation notice** 15
- (1) Subsections (2) to (4) apply where processing is the subject of a designation notice for the time being in force.
  - (2) A person who applied for the designation of the processing must notify the Secretary of State without undue delay if the person 20

considers that the designation is no longer required for the purposes of safeguarding national security.

- (3) A person who applied for the designation of the processing must, on a request from the Secretary of State, provide— 5
- (a) a description of the processing that is being, or is intended to be, carried out in reliance on the notice, and 10
- (b) an explanation of why the person considers that designation of the processing continues to be required for the purposes of safeguarding national security. 15
- (4) The Secretary of State must at least annually—
- (a) review each designation notice that is for the time being in force, and 20

- (b) consider whether designation of the processing which is the subject of the notice continues to be required for the purposes of safeguarding national security. 5
- (5) The Secretary of State—
  - (a) may withdraw a designation notice by giving a further notice (a “withdrawal notice”) to the persons who applied for the designation, and 10
  - (b) must give a withdrawal notice if the Secretary of State considers that designation of some or all of the processing to which the notice applies is no longer required for the purposes of safeguarding national security (whether as a result of a review required under subsection (4) or otherwise). 15  
20
- (6) A withdrawal notice must—

- (a) withdraw the designation notice completely, and
    - (b) state when it comes into force.
  - (7) In determining when a withdrawal notice required under subsection (5) (b) comes into force, the Secretary of State must consider—
    - (a) the desirability of the processing ceasing to be designated as soon as possible, and 10
    - (b) where relevant, the time needed to effect an orderly transition to new arrangements for the processing of personal data. 15
- 82D Records of designation notices**
- (1) Where the Secretary of State gives a designation notice—
    - (a) the Secretary of State must send a copy of the notice to the Commissioner, and 20

- (b) the Commissioner must publish a record of the notice.
- (2) The record must contain—
  - (a) the Secretary of State's name,
  - (b) the date on which the notice was given, 5
  - (c) the date on which the notice ceases to have effect (if not previously withdrawn), and
  - (d) subject to subsection (3), the rest of the text of the notice. 10
- (3) The Commissioner must not publish the text, or a part of the text, of the notice if—
  - (a) the Secretary of State determines that publishing the text or that part of the text— 15
    - (i) would be against the interests of national security, 20
    - (ii) would be contrary to the public interest, or

- (iii) might jeopardise the safety of any person, and
    - (b) the Secretary of State has notified the Commissioner of that determination. 5
  - (4) The Commissioner must keep the record of the notice available to the public while the notice is in force.
  - (5) Where the Secretary of State gives a withdrawal notice, the Secretary of State must send a copy of the notice to the Commissioner. 10
- 82E Appeal against designation notice**
- (1) A person directly affected by a designation notice may appeal to the Tribunal against the notice. 15
  - (2) If, on an appeal under this section, the Tribunal finds that, applying the principles applied by a court on an application for judicial review, the Secretary of State did not have reasonable grounds for giving the notice, the Tribunal may— 20

- (a) allow the appeal, and
- (b) quash the notice.”

## **28 Joint processing: consequential amendments**

- (1) The 2018 Act is amended as follows. 5
- (2) In section 1(5) (overview: Part 4), at the end insert “(and certain processing carried out by competent authorities jointly with the intelligence services)”. 5
- (3) In section 29 (processing to which Part 3 applies), after subsection (1) insert— 10
  - “(1A) This Part does not apply to processing to which Part 4 applies by virtue of a designation notice (see section 82A).”
- (4) In section 83 (meaning of “controller” and “processor” in Part 4)— 15
  - (a) before subsection (1) insert— 15
    - “(A1) For the purposes of this Part— 15
      - (a) an intelligence service is the “controller” in relation to the processing of personal data if 20

- it satisfies subsection (1) alone or jointly with others, and
- (b) a qualifying competent authority is the “controller” in relation to the processing of personal data that is the subject of a designation notice that is for the time being in force if the authority satisfies subsection (1) jointly with others.”, 5 10
- (b) in subsection (1), for the words before paragraph (a) substitute “This subsection is satisfied by a person who—”, and
- (c) in subsection (2), for “intelligence service on which” substitute “person on whom”. 15
- (5) In section 84 (other definitions)—
- (a) after subsection (2) insert—
- “(2A) “Designation notice” has the meaning given in section 82A.”, and 20
- (b) after subsection (6) insert—

- “(6A) “Withdrawal notice” has the meaning given in section 82C.”
- (6) In section 104(1) (joint controllers), for “intelligence services” substitute “controllers”. 5
- (7) In section 202(1)(a)(i) (proceedings in the First-tier Tribunal: contempt) after “79,” insert “82E,”.
- (8) In section 203(1) (Tribunal Procedure Rules), after “79,” insert “82E,”. 10
- (9) In section 206 (index of defined expressions), in the Table—
- (a) in the entry for “competent authority”—
- (i) for “Part 3” substitute “Parts 3 and 4”, and 15
- (ii) for “section 30” substitute “sections 30 and 82”, and
- (b) at the appropriate places insert—
- “designation section 84”;  
notice  
(in Part  
4) 20

“qualifying competent authority (in Part 4)	section 82”;	
“withdrawal notice (in Part 4)	section 84”.	5

*Information Commissioner’s role*

**29 Duties of the Commissioner in carrying out functions**

- (1) The 2018 Act is amended as follows. 10
- (2) Omit section 2(2) (duty of Commissioner when carrying out functions).
- (3) After section 120 insert—

*“Duties in carrying out functions*

**120A Principal objective** 15

It is the principal objective of the Commissioner, in carrying out functions under the data protection legislation—

- (a) to secure an appropriate level of protection for personal data, having regard to the interests of data subjects, controllers and others and matters of general public interest, and 5
  - (b) to promote public trust and confidence in the processing of personal data.
  
- 120B Duties in relation to functions under the data protection legislation 10**

In carrying out functions under the data protection legislation, the Commissioner must have regard to such of the following as appear to the Commissioner to be relevant in the circumstances— 15

  - (a) the desirability of promoting innovation; 20
  - (b) the desirability of promoting competition;

- (c) the importance of the prevention, investigation, detection and prosecution of criminal offences;
- (d) the need to safeguard public security and national security. 5

## **120C Strategy**

- (1) The Commissioner must prepare a strategy for carrying out the Commissioner's functions under the data protection legislation in accordance with the Commissioner's duties under— 10
  - (a) sections 120A and 120B,
  - (b) section 108 of the Deregulation Act 2015 (exercise of regulatory functions: economic growth), and 15
  - (c) section 21 of the Legislative and Regulatory Reform Act 2006 (exercise of regulatory functions: principles). 20

- (2) The Commissioner must—
- (a) review the strategy from time to time, and
  - (b) revise the strategy as appropriate. 5
- (3) The Commissioner must publish the strategy and any revised strategy.
- 120D Duty to consult other regulators**
- (1) The Commissioner must, at such times as the Commissioner considers appropriate, consult the persons mentioned in subsection (2) about how the manner in which the Commissioner exercises functions under the data protection legislation may affect economic growth, innovation and competition. 10  
15
- (2) The persons are—
- (a) such persons exercising regulatory functions as the Commissioner considers appropriate; 20

- (b) such other persons  
as the Commissioner  
considers appropriate.
  
- (3) In this section, “regulatory function”  
has the meaning given by section 111 of the Deregulation Act 2015.” 5
  
- (4) In section 139 (reporting to Parliament),  
after subsection (1) insert—
  - “(1A) In connection with the  
Commissioner’s functions under the  
data protection legislation, the report  
must contain (among other things)— 10
    - (a) a review of what the  
Commissioner has done during  
the reporting period to comply  
with the duties under— 15
      - (i) sections 120A and 120B,
      - (ii) section 108 of  
the Deregulation  
Act 2015, and 20
      - (iii) section 21 of the  
Legislative and

Regulatory Reform  
Act 2006,

including a review of the  
operation of the strategy  
prepared and published  
under section 120C;

5

- (b) a review of what the  
Commissioner has done  
during the reporting period  
to comply with the duty  
under section 120D.

10

(1B) In subsection (1A), “the reporting  
period” means the period to  
which the report relates.”

- (5) The Commissioner must prepare and  
publish a strategy in accordance with  
section 120C of the 2018 Act before  
the end of the period of 18 months  
beginning with the day on which  
this section comes into force.

15

20

### 30 Strategic priorities

- (1) The 2018 Act is amended as follows.

- (2) After section 120D (inserted by section 29 of this Act) insert—

*“Strategic priorities*

- 120E Designation of statement of strategic priorities** 5
- (1) The Secretary of State may designate a statement as the statement of strategic priorities for the purposes of this Part if the requirements set out in section 120H are satisfied. 10
- (2) The statement of strategic priorities is a statement prepared by the Secretary of State that sets out the strategic priorities of His Majesty’s government relating to data protection. 15
- (3) The Secretary of State must publish the statement of strategic priorities (including any amended statement following a review under section 120G) in whatever manner the Secretary of State considers appropriate. 20

- (4) In this Part, “the statement of strategic priorities” means the statement for the time being designated under subsection (1).
- 120F Duties of the Commissioner in relation to strategic priorities** **5**
- (1) The Commissioner must have regard to the statement of strategic priorities when carrying out functions under the data protection legislation. *10*
- (2) But the duty in subsection (1) does not apply when the Commissioner is carrying out functions in relation to a particular person, case or investigation. *15*
- (3) Where the Secretary of State designates a statement as the statement of strategic priorities (including any amended statement following a review under section 120G), the Commissioner must— *20*
- (a) explain in writing how the Commissioner will have regard

- to the statement when carrying out functions under the data protection legislation, and
- (b) publish a copy of that explanation. 5
- (4) The duty in subsection (3) must be complied with—
- (a) within the period of 40 days beginning with the day of the designation, or 10
- (b) within whatever longer period the Secretary of State may allow.
- (5) In calculating the period of 40 days mentioned in subsection (4)(a), no account is to be taken of— 15
- (a) Saturdays or Sundays,
- (b) Christmas Day or Good Friday, or
- (c) a day which is a bank holiday under the Banking and 20

Financial Dealings Act 1971 in any part of the United Kingdom.

- (6) For a further duty of the Commissioner in relation to the statement of strategic priorities, see section 139(1A)(c). 5

### **120G Review of designated statement**

- (1) The Secretary of State must review the statement of strategic priorities if a period of 3 years has elapsed since the relevant time. 10
- (2) The “relevant time”, in relation to the statement of strategic priorities, means—
- (a) the time when the statement was first designated under section 120E, or 15
  - (b) if later, the time when a review of the statement under this section last took place. 20
- (3) A review under subsection (1) must take place as soon as

reasonably practicable after the end of the 3 year period.

- (4) The Secretary of State may review the statement of strategic priorities at any other time if— 5
- (a) a Parliamentary general election has taken place since the relevant time,
  - (b) a significant change in the policy of His Majesty's government relating to data protection has occurred since the relevant time, or 10
  - (c) the Parliamentary requirement in relation to an amended statement was not met on the last review (see subsection (12)). 15
- (5) For the purposes of subsection (4) (b), a significant change in the policy of the government relating to data protection has occurred only if— 20

- (a) the change was not anticipated by the Secretary of State at the relevant time, and
  - (b) if the change had been so anticipated, it appears to the Secretary of State likely that the statement would have been different in a material way. 5
- (6) On a review under this section, the Secretary of State may— 10
  - (a) amend the statement (including by replacing the whole or part of the statement with new content),
  - (b) leave the statement as it is, or 15
  - (c) withdraw the statement's designation as the statement of strategic priorities.
- (7) A statement amended under subsection (6)(a) has effect only if the Secretary of State designates the amended statement as the statement of strategic priorities under 20

section 120E (and the requirements set out in section 120H apply in relation to any such designation).

- (8) Where the designation of a statement is withdrawn under subsection (6) (c), the Secretary of State must publish notice of the withdrawal in whatever manner the Secretary of State considers appropriate. 5
- (9) For the purposes of this section, corrections of clerical or typographical errors are not to be treated as amendments of the statement. 10
- (10) The designation of a statement as the statement of strategic priorities ceases to have effect upon a subsequent designation of an amended statement as the statement of strategic priorities in accordance with subsection (7). 15 20
- (11) For the purposes of subsection (2)(b), a review of a statement takes place—

- (a) in the case of a decision on the review to amend the statement under subsection (6)(a)—
- (i) at the time when the amended statement is designated as the statement of strategic priorities under section 120E, or 5
  - (ii) if the amended statement is not so designated, at the time when the amended statement was laid before Parliament under section 120H(1); 10 15
- (b) in the case of a decision on the review to leave the statement as it is under subsection (6)(b), at the time when that decision is taken. 20
- (12) For the purposes of subsection (4)(c), the Parliamentary requirement in relation to an amended statement was not met on the last review if—

- (a) on the last review of the statement of strategic priorities to be held under this section, an amended statement was laid before Parliament under section 120H(1), but 5
- (b) the amended statement was not designated because within the period mentioned in section 120H(2) either House of Parliament resolved not to approve it. 10

## **120H Parliamentary procedure**

- (1) Before the Secretary of State designates a statement as the statement of strategic priorities, the Secretary of State must lay the statement before Parliament. 15
- (2) The Secretary of State must then wait until the end of the 40-day period and may not designate the statement if, within that period, either House of Parliament resolves not to approve it. 20

- (3) “The 40-day period” means—
- (a) if the statement is laid before both Houses of Parliament on the same day, the period of 40 days beginning with that day, or 5
  - (b) if the statement is laid before the Houses of Parliament on different days, the period of 40 days beginning with the later of those days. 10
- (4) In calculating the 40-day period, no account is to be taken of any whole days that fall within a period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.” 15
- (3) In section 139 (reporting to Parliament), in subsection (1A) (inserted by section 29 of this Act), at the end insert— 20
- “(c) a review of how the Commissioner has had regard to the statement of

strategic priorities during  
the reporting period.”

- (4) In the Table in section 206 (index of defined expressions), at the appropriate place insert— 5

“statement of strategic priorities (in Part 5) section 120E”. 10

### **31 Codes of practice for the processing of personal data**

- (1) The 2018 Act is amended in accordance with subsections (2) to (6). 15

- (2) After section 124 insert—

#### **“124A Other codes of practice**

- (1) The Commissioner must prepare appropriate codes of practice giving guidance as to good practice in the processing of personal data if 20

required to do so by regulations made by the Secretary of State.

- (2) Regulations under this section—
- (a) must describe the personal data or processing to which the code of practice is to relate, and 5
  - (b) may describe the persons or classes of person to whom it is to relate.
- (3) Where a code under this section is in force, the Commissioner may prepare amendments of the code or a replacement code. 10
- (4) Before preparing a code or amendments under this section, the Commissioner must consult the Secretary of State and such of the following as the Commissioner considers appropriate— 15
- (a) trade associations; 20
  - (b) data subjects;

- (c) persons who appear to the Commissioner to represent the interests of data subjects.
- (5) A code under this section may include transitional provision or savings. 5
- (6) Regulations under this section are subject to the negative resolution procedure.
- (7) In this section—
- “good practice in the processing of personal data” means such practice in the processing of personal data as appears to the Commissioner to be desirable having regard to the interests of data subjects and others, including compliance with the requirements of the data protection legislation; 10
- “trade association” includes a body representing controllers or processors.” 15 20
- (3) In section 125 (approval of codes prepared under sections 121 to 124)—

- (a) in the heading, for “124”  
substitute “124A”,
- (b) for subsection (5) substitute—
- “(5) If the Commissioner is prevented  
by subsection (3) from issuing a  
code that is not a replacement code,  
the Commissioner must prepare  
another version of the code.”, and
- (c) in subsection (9), for “or 124”  
substitute “, 124 or 124A”. 5 10
- (4) In section 126 (publication and review  
of codes issued under section 125(4)),  
in subsection (4), for “or 124(2)”  
substitute “, 124A(2) or 124A(3)”.
- (5) Omit section 128 (other codes of practice). 15
- (6) In section 129 (consensual audits), in  
subsection (3), for “128” substitute “124A”.
- (7) In section 19AC of the Registration Service  
Act 1953 (code of practice), in subsection  
(11), for “128” substitute “124A”. 20
- (8) In the Statistics and Registration  
Service Act 2007—

- (a) in section 45 (information held by HMRC), in subsection (4A), for “128” substitute “124A”,
  - (b) in section 45A (information held by other public authorities), in subsection (8), for “128” substitute “124A”, 5
  - (c) in section 45E (further provisions about powers in sections 45B, 45C and 45D), in subsection (16), for “128” substitute “124A”, and 10
  - (d) in section 53A (disclosure by the Board to devolved administrations), in subsection (9), for “128” substitute “124A”.
- (9) In the Digital Economy Act 2017— 15
- (a) in section 43 (code of practice), in subsection (13), for “128” substitute “124A”,
  - (b) in section 52 (code of practice), in subsection (13), for “128” substitute “124A”, 20

(c) in section 60 (code of practice),  
in subsection (13), for “128”  
substitute “124A”, and

(d) in section 70 (code of practice),  
in subsection (15), for “128”  
substitute “124A”.

5

### **32 Codes of practice: panels and impact assessments**

In the 2018 Act, after section 124A (inserted  
by section 31 of this Act) insert—

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#### **“124B Panels to consider codes of practice**

(1) This section applies where a  
code is prepared under section  
121, 122, 123, 124 or 124A,  
subject to subsection (11).

15

(2) The Commissioner must  
establish a panel of individuals  
to consider the code.

(3) The panel must consist of—

20

- (a) individuals the Commissioner considers have expertise in the subject matter of the code, and
  - (b) individuals the Commissioner considers—
    - (i) are likely to be affected by the code, or
    - (ii) represent persons likely to be affected by the code.
- (4) Before the panel begins to consider the code, the Commissioner must—
- (a) publish the code in draft, and
  - (b) publish a statement that—
    - (i) states that a panel has been established to consider the code,
    - (ii) identifies the members of the panel,
    - (iii) explains the process by which they were selected, and

- (iv) explains the reasons for their selection.
- (5) Where at any time it appears to the Commissioner that a member of the panel is not willing or able to serve as a member of the panel, the Commissioner may select another individual to be a member of the panel. 5
- (6) Where the Commissioner selects an individual to be a member of the panel under subsection (5), the Commissioner must publish a statement that— 10
  - (a) identifies the member of the panel, 15
  - (b) explains the process by which the member was selected, and
  - (c) explains the reasons for the member's selection. 20
- (7) The Commissioner must make arrangements—

- (a) for the members of the panel to consider the code with one another (whether in person or otherwise), and
  - (b) for the panel to prepare and submit to the Commissioner a report on the code within such reasonable period as is determined by the Commissioner. 5
- (8) If the panel submits to the Commissioner a report on the code within the period determined by the Commissioner, the Commissioner must as soon as reasonably practicable— 10
  - (a) make any alterations to the code that the Commissioner considers appropriate in the light of the report, and 15
  - (b) publish—
    - (i) the code in draft, 20

- (ii) the report or a summary of it, and
  - (iii) in a case where a recommendation in the report to alter the code has not been accepted by the Commissioner, an explanation of why it has not been accepted. 5
- (9) The Commissioner may pay remuneration and expenses to the members of the panel. 10
- (10) This section applies in relation to amendments prepared under section 121, 122, 123, 124 or 124A as it applies in relation to codes prepared under those sections, subject to subsection (11). 15
- (11) The Secretary of State may by regulations provide that this section does not apply, or applies with modifications, in the case of a code or amendments of a code that— 20

- (a) is prepared under section 124A, and
  - (b) is specified in the regulations.
- (12) Regulations under this section are subject to the negative resolution procedure. 5
- 124C Impact assessments for codes of practice**
- (1) Where a code is prepared under section 121, 122, 123, 124 or 124A, the Commissioner must carry out and publish an assessment of— 10
  - (a) who would be likely to be affected by the code, and
  - (b) the effect the code would be likely to have on them. 15
- (2) This section applies in relation to amendments prepared under section 121, 122, 123, 124 or 124A as it applies in relation to codes prepared under those sections.” 20

### **33 Codes of practice: approval by the Secretary of State**

(1) The 2018 Act is amended as follows.

(2) After section 124C (inserted by section 32 of this Act) insert—

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#### **“124D Approval by Secretary of State of codes of practice**

(1) Where a code is prepared under section 121, 122, 123, 124 or 124A, the Commissioner must submit the final version to the Secretary of State.

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(2) Within the period of 40 days beginning with the day on which the code is submitted to the Secretary of State, the Secretary of State must decide whether to approve the code.

15

(3) If the Secretary of State approves the code, the Secretary of State must lay the code before Parliament.

(4) If the Secretary of State does not approve the code, the Secretary of State must—

20

- (a) give a statement to the Commissioner that—
    - (i) states that the Secretary of State does not approve the code, and 5
    - (ii) explains the reasons why the Secretary of State does not approve the code, and
  - (b) publish the statement. 10
- (5) If the Secretary of State does not approve the code, the Commissioner must—
  - (a) revise the code in the light of the statement given by the Secretary of State, and 15
  - (b) submit the revised code to the Secretary of State.
- (6) If the Commissioner submits a revised code to the Secretary of State, subsections (2) to (5) and this subsection apply again. 20

- (7) This section applies in relation to amendments prepared under section 121, 122, 123, 124 or 124A as it applies in relation to codes prepared under those sections. 5
- (8) In calculating the period of 40 days mentioned in subsection (2), no account is to be taken of—
- (a) Saturdays or Sundays,
  - (b) Christmas Day or Good Friday, or 10
  - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.” 15
- (3) In section 125 (approval of codes prepared under sections 121 to 124)—
- (a) in the heading, after “Approval” insert “by Parliament”, 20
  - (b) for subsections (1) and (2) substitute—
- “(1) This section applies where a

code is laid before Parliament under section 124D.”,

(c) in subsection (3), for “a code prepared under section 121, 122, 123 or 124” substitute “the code”, and

5

(d) in subsection (9), for “subsections (2) and (5)” substitute “subsection (5)”.

### **34 Vexatious or excessive requests made to the Commissioner**

(1) The 2018 Act is amended in accordance with subsections (2) and (3).

10

(2) In section 135 (manifestly unfounded or excessive requests made to the Commissioner)—

(a) for the heading substitute “Vexatious or excessive requests”,

15

(b) before subsection (1) insert—

“(A1) This section makes provision about cases in which a request made to the Commissioner, to which the Commissioner is required or authorised to respond under the data

20

protection legislation, is vexatious or excessive (see section 204A).”,

(c) in subsection (1) omit the words from the beginning to “excessive.”,

(d) after subsection (1) insert—

5

“(1A) In subsection (1)—

(a) the reference in paragraph (a) to charging a reasonable fee is, in a case in which section 134 is relevant, a reference to doing so under that section, and

10

(b) paragraph (b) is not to be read as implying anything about whether the Commissioner may refuse to act on requests that are neither vexatious nor excessive.”,

15

(e) omit subsection (2),

(f) in subsection (3)—

(i) for “(1)” substitute “(A1)”, and

20

(ii) for “manifestly unfounded” substitute “vexatious”,

- (g) omit subsection (4), and
- (h) after that subsection insert—
  - “(5) Article 57(3) of the UK GDPR (performance of Information Commissioner’s tasks generally to be free of charge for data subject) has effect subject to this section.” 5
- (3) In section 136(1) (guidance about fees), omit paragraph (b) (and the “or” before it).
- (4) In Article 57 of the UK GDPR (Information Commissioner’s tasks), omit paragraph 4. 10

### **35 Analysis of performance**

In the 2018 Act, after section 139 insert—

#### **“139A Analysis of performance**

- (1) The Commissioner must prepare and publish an analysis of the Commissioner’s performance using key performance indicators. 15
- (2) The analysis must be prepared and published at least annually. 20
- (3) In this section, “key performance

indicators” means factors by reference to which the Commissioner’s performance can be measured most effectively.

*Documents and notices”.*

5

### *Enforcement*

## **36 Power of the Commissioner to require documents**

(1) The 2018 Act is amended as follows.

(2) In section 142 (information notices)—

10

(a) in subsection (1)—

(i) in paragraph (a), after “information” insert “or documents”, and

(ii) in paragraph (b), after “information” insert “or documents”,

15

(b) in subsection (2)(b), after “information” insert “or documents”,

(c) in subsection (3)—

- (i) in paragraph (a), after “information”, in both places it occurs, insert “or documents”,
- (ii) in paragraph (b), after “information” insert “or documents”, 5
- (iii) in paragraph (c), after “information” insert “or documents”, and
- (iv) in paragraph (d), after “information” insert “or documents”,
- (d) in subsection (5), after “information”, 10  
in the second place it occurs,  
insert “or documents”,
- (e) in subsection (6), after “information”,  
in the second place it occurs,  
insert “or documents”, and 15
- (f) in subsection (7)—
  - (i) in paragraph (a), for “is” substitute “or documents are”, and
  - (ii) in the words after paragraph (b), after “information” 20  
insert “or documents”.

- (3) In section 143 (information notices: restrictions)—
- (a) in subsection (1)(b)(ii), for “is” substitute “or documents are”,
  - (b) in subsection (2), after “information”, 5  
in the second place it occurs,  
insert “or documents”,
  - (c) in subsection (3), for “in respect” substitute “or documents to the extent that requiring the person to do so 10  
would result in the disclosure”,
  - (d) in subsection (4), for “in respect” substitute “or documents to the extent that requiring the person to do so 15  
would result in the disclosure”, and
  - (e) in subsection (6), after “information”,  
in the second place it occurs,  
insert “or documents”.
- (4) In section 145 (information orders)—
- (a) in subsection (2)— 20

- (i) in paragraph (a), after “information”, in the first place it occurs, insert “or documents”, and
  - (ii) in paragraph (b), after “information” insert “or documents”, and 5
- (b) in subsection (3)—
  - (i) in paragraph (a), after “information” insert “or documents”,
  - (ii) in paragraph (b), after “information” insert “or documents”, and 10
  - (iii) in paragraph (c), after “information” insert “or documents”.
- (5) In section 148(1) (destroying or falsifying information and documents etc), in paragraph (a), after “information”, in the second place it occurs, insert “or a document”. 15
- (6) In section 160 (guidance about regulatory action), in subsection (3)(a), for “is” substitute “or documents are”. 20
- (7) In Schedule 17 (review of processing of personal data for the purposes

of journalism), in paragraph 2(2)  
(information notices)—

(a) in paragraph (a), for “is” substitute  
“or documents are”, and

(b) in the words after paragraph (b), after 5  
“information” insert “or documents”.

### **37 Power of the Commissioner to require a report**

(1) The 2018 Act is amended as follows.

(2) In section 146 (assessment notices)— 10

(a) in subsection (2), after  
paragraph (i), insert—

“(j) make arrangements for an  
approved person to prepare a  
report on a specified matter; 15

(k) provide to the Commissioner a  
report prepared in pursuance  
of such arrangements.”,

(b) after subsection (3) insert—

“(3A) An assessment notice that requires 20  
a controller or processor to make

arrangements for an approved person to prepare a report may require the arrangements to include specified terms as to—

- (a) the preparation of the report; 5
- (b) the contents of the report;
- (c) the form in which the report is to be provided;
- (d) the date by which the report is to be completed.”, 10

(c) after subsection (11) insert—

“(11A) Where the Commissioner gives an assessment notice that requires the controller or processor to make arrangements for an approved person to prepare a report, the controller or processor is liable for the payment of the approved person’s remuneration and expenses under the arrangements.”, and 15 20

(d) in subsection (12), before the definition of “domestic premises” insert—

““approved person”, in relation to a report, means a person approved to prepare the report in accordance with section 146A;”.

(3) After section 146 insert— 5

**“146A Assessment notices: approval of person to prepare report etc**

- (1) This section applies where an assessment notice requires a controller or processor to make arrangements for an approved person to prepare a report. 10
- (2) The controller or processor must, within such period as is specified in the assessment notice, nominate to the Commissioner a person to prepare the report. 15
- (3) If the Commissioner is satisfied that the nominated person is a suitable person to prepare the report, the Commissioner must by written notice to the controller or 20

processor approve the nominated person to prepare the report.

- (4) If the Commissioner is not satisfied that the nominated person is a suitable person to prepare the report, the Commissioner must by written notice to the controller or processor—
- (a) inform the controller or processor that the Commissioner has decided not to approve the nominated person to prepare the report, 10
  - (b) inform the controller or processor of the reasons for that decision, and 15
  - (c) approve a person who the Commissioner is satisfied is a suitable person to prepare the report to do so.
- (5) If the controller or processor does not nominate a person within the period specified in the assessment notice, the Commissioner must by 20

written notice to the controller or processor approve a person who the Commissioner is satisfied is a suitable person to prepare the report to do so.

- (6) It is the duty of the controller or processor to give the person approved to prepare the report all such assistance as the person may reasonably require to prepare the report.” 5 10
- (4) In section 155 (penalty notices), in subsection (1)—
- (a) omit “or” at the end of paragraph (a), and
- (b) at the end of paragraph (b) insert “, or 15
- (c) has failed to comply with a duty imposed on the person by section 146A(6).”
- (5) In section 160 (guidance about regulatory action), in subsection (4), after paragraph (a) insert— 20

- “(aa) provision specifying factors to be considered in determining whether to give an assessment notice to a person that imposes a requirement of a sort mentioned in section 146(2)(j); 5
- (ab) provision about the factors the Commissioner may take into account when determining the suitability of a person to prepare a report of a sort mentioned in section 146(2)(j);” . 10

### **38 Interview notices**

- (1) The 2018 Act is amended as follows.
- (2) After section 148 insert— 15

#### *“Interview notices*

#### **148A Interview notices**

- (1) This section applies where the Commissioner suspects that a controller or processor— 20

- (a) has failed or is failing as described in section 149(2), or
  - (b) has committed or is committing an offence under this Act.
  
- (2) For the purpose of investigating the suspected failure or offence, the Commissioner may, by written notice (an “interview notice”), require an individual within subsection (3) to—
  - (a) attend at a place specified in the notice, and
  - (b) answer questions with respect to any matter relevant to the investigation.
  
- (3) An individual is within this subsection if the individual—
  - (a) is the controller or processor,
  - (b) is or was at any time employed by, or otherwise working for, the controller or processor, or

- (c) is or was at any time concerned in the management or control of the controller or processor.
- (4) An interview notice must specify the time at which the individual must attend at the specified place and answer questions (but see the restrictions in subsections (6) and (7)). 5
- (5) An interview notice must—
  - (a) indicate the nature of the suspected failure or offence that is the subject of the investigation, 10
  - (b) provide information about the consequences of failure to comply with the notice, and 15
  - (c) provide information about the rights under sections 162 and 164 (appeals etc).
- (6) An interview notice may not require an individual to attend at the specified place and answer questions before the end of the 20

period within which an appeal can be brought against the notice.

- (7) If an appeal is brought against an interview notice, the individual to whom the notice is given need not attend at the specified place and answer questions pending the determination or withdrawal of the appeal. 5
- (8) If an interview notice— 10
- (a) states that, in the Commissioner’s opinion, it is necessary for the individual to attend at the specified place and answer questions urgently, and 15
- (b) gives the Commissioner’s reasons for reaching that opinion,
- subsections (6) and (7) do not apply but the notice must not require the individual to attend at the specified place and answer questions before 20

the end of the period of 24 hours beginning when the notice is given.

- (9) The Commissioner may cancel or vary an interview notice by written notice to the individual to whom it was given. 5

### **148B Interview notices: restrictions**

- (1) An interview notice does not require an individual to answer questions to the extent that requiring the person to do so would involve an infringement of the privileges of either House of Parliament. 10
- (2) An interview notice does not require an individual to answer questions in respect of a communication which is made— 15
- (a) between a professional legal adviser and the adviser's client, and 20
  - (b) in connection with the giving of legal advice to the client with respect of obligations,

liabilities or rights under the data protection legislation.

- (3) An interview notice does not require an individual to answer questions in respect of a communication which is made—
- (a) between a professional legal adviser and the adviser's client or between such an adviser or client and another person, 5 10
  - (b) in connection with or in contemplation of proceedings under or arising out of the data protection legislation, and
  - (c) for the purposes of such proceedings. 15
- (4) In subsections (2) and (3), references to the client of a professional legal adviser include references to a person acting on behalf of the client. 20
- (5) An interview notice does not require an individual to answer questions if doing so would, by revealing

evidence of the commission of an offence, expose the individual to proceedings for that offence.

- (6) The reference to an offence in subsection (5) does not include an offence under—
- (a) this Act;
  - (b) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath);
  - (c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath);
  - (d) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statutory declarations and other false unsworn statements).
- (7) A statement made by an individual in response to an interview notice may not be used in evidence against that individual on a prosecution for

an offence under this Act (other than an offence under section 148C) unless in the proceedings—

- (a) in giving evidence the individual provides information inconsistent with the statement, and 5
  - (b) evidence relating to the statement is adduced, or a question relating to it is asked, by that individual or on that individual's behalf. 10
- (8) The Commissioner may not give an interview notice with respect to the processing of personal data for the special purposes. 15
- (9) The Commissioner may not give an interview notice to an individual for the purpose of investigating a suspected failure or offence if the controller or processor suspected of the failure or offence is— 20

- (a) a body specified in section 23(3) of the Freedom of Information Act 2000 (bodies dealing with security matters), or 5
- (b) the Office for Standards in Education, Children’s Services and Skills in so far as it is a controller or processor in respect of information processed for the purposes of functions exercisable by His Majesty’s Chief Inspector of Education, Children’s Services and Skills by virtue of section 5(1)(a) of the Care Standards Act 2000. 10 15

**148C False statements made in response to interview notices**

It is an offence for an individual, in response to an interview notice— 20

- (a) to make a statement which the individual knows to be false in a material respect, or

- (b) recklessly to make a statement which is false in a material respect.”
- (3) In section 149 (enforcement notices), in subsection (9)(b)— 5
- (a) after “an assessment notice” insert “, an interview notice”, and
- (b) after “147” insert “, 148A, 148B”.
- (4) In section 155 (penalty notices), in subsection (1)(b), after “assessment notice” insert “, an interview notice”. 10
- (5) In section 157 (maximum amount of penalty), in subsection (4), after “assessment notice” insert “, an interview notice”. 15
- (6) In section 160 (guidance about regulatory action)—
- (a) in subsection (1), after paragraph (b) insert—
- “(ba) interview notices,”, and 20
- (b) after subsection (5) insert—

“(5A) In relation to interview notices, the guidance must include—

- (a) provision specifying factors to be considered in determining whether to give an interview notice to an individual; 5
- (b) provision about the circumstances in which the Commissioner would consider it appropriate to give an interview notice to an individual in reliance on section 148A(8) (urgent cases); 10
- (c) provision about the circumstances in which the Commissioner would consider it appropriate to vary the place or time specified in an interview notice at the request of the individual to whom the notice is given; 15 20
- (d) provision about the nature of interviews carried

- out in accordance with  
an interview notice;
- (e) provision about how the  
Commissioner will determine  
how to proceed if an  
individual does not comply  
with an interview notice.” 5
- (7) In section 162 (rights of appeal), in  
subsection (1), after paragraph (b) insert—  
“(ba) an interview notice;”. 10
- (8) In section 164 (applications in  
respect of urgent notices)—  
(a) in subsection (1), after  
“assessment notice” insert “,  
an interview notice”, and 15  
(b) in subsection (5), after paragraph (b)  
(but before the “and” after it) insert—  
“(ba) in relation to an interview  
notice, a statement under  
section 148A(8)(a),”. 20
- (9) In section 181 (interpretation of Part  
6), at the appropriate place, insert—

““interview notice” has the meaning given in section 148A;”.

(10) In section 196 (penalties for offences), in subsection (2), after “148,” insert “148C,”.

(11) In section 206 (index of defined expressions), at the appropriate place, insert—

“interview notice  
(in Part 6)  
section 181”.

(12) In Schedule 17 (review of processing of personal data for the purposes of journalism)—

(a) after paragraph 3 insert—

*“Interview notices*

3A(1) Sub-paragraph (2) applies where the Commissioner gives an interview notice to an individual during a relevant period.

(2) If the interview notice—

- (a) states that, in the Commissioner’s opinion, it is necessary for the individual to comply with a requirement in the notice for the purposes of the relevant review, and 5
- (b) gives the Commissioner’s reasons for reaching that opinion,
- subsections (6) and (7) of section 148A do not apply but the notice must not require the individual to comply with the requirement before the end of the period of 24 hours beginning when the notice is given. 10
- (3) During a relevant period, section 148B has effect as if for subsection (8) there were substituted— 15
- “(8) The Commissioner may not give an individual an interview notice with respect to the processing of personal data for the special purposes unless a determination under section 174 with respect to the data or the processing has taken effect.” ”, and 20

- (b) in paragraph 4 (applications in respect of urgent notices)—
- (i) for “or assessment notice” substitute “, assessment notice or interview notice”,
  - (ii) for “or 3(2)(a)” substitute “, 3(2)(a) or 3A(2)(a)”, and
  - (iii) for “or 146(8)(a)” substitute “, 146(8)(a) or 148A(8)(a)”.

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### **39 Penalty notices**

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(1) The 2018 Act is amended as follows.

(2) In paragraph 2 of Schedule 16 (notice of intent to impose penalty), omit sub-paragraphs (2) and (3).

(3) In paragraph 4 of that Schedule (giving a penalty notice)—

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(a) before sub-paragraph (1) insert—

“(A1) This paragraph applies where the Commissioner gives a notice of intent to a person.

20

(A2) Within the period of 6 months

beginning with the day the notice is given, or as soon as reasonably practicable thereafter, the Commission must give to the person—

(a) a penalty notice, or 5

(b) written notice that the Commissioner has decided not to give a penalty notice to the person.”,

(b) in sub-paragraph (1)— 10

(i) at the beginning, insert “But”, and

(ii) after “penalty notice” insert “to the person”, and

(c) in sub-paragraph (2), for “a person” substitute “the person”. 15

(4) In section 160 (guidance about regulatory action), in subsection (7), after paragraph (d) insert—

“(e) provision about the circumstances in which the Commissioner would consider it necessary to comply with 20

the duty in paragraph 4(A2) of Schedule 16 after the period of 6 months mentioned in that paragraph.”

#### **40 Annual report on regulatory action** 5

(1) The 2018 Act is amended as follows.

(2) In section 139 (reporting to Parliament), before subsection (3) insert—

“(2A) The report under this section may include the annual report under section 161A.” 10

(3) In the heading before section 160, at the end insert “and report”.

(4) After section 161 insert—

#### **“161A Annual report on regulatory action** 15

(1) The Commissioner must produce and publish an annual report containing the information described in subsections (2) to (5).

(2) The report must include the 20

following information about  
UK GDPR investigations—

- (a) the number of investigations begun, continued or completed by the Commissioner during the reporting period, 5
  - (b) the different types of act and omission that were the subject matter of the investigations,
  - (c) the enforcement powers exercised by the Commissioner in the reporting period in connection with the investigations, 10
  - (d) the duration of investigations that ended in the reporting period, and 15
  - (e) the different types of outcome in investigations that ended in that period. 20
- (3) The report must include information about the enforcement powers

exercised by the Commissioner in the reporting period in connection with—

- (a) processing of personal data by a competent authority for any of the law enforcement purposes, and 5
  - (b) processing of personal data to which Part 4 applies.
- (4) The information included in the report in accordance with subsections (2) and (3) must include information about— 10
  - (a) the number of penalty notices given in the reporting period that were given more than 6 months after the notice of intent was given under paragraph 2 of Schedule 16, and 15
  - (b) the reasons why that happened.
- (5) The report must include a review of how the Commissioner had regard to the guidance published under section 160 when 20

exercising the Commissioner’s enforcement powers as described in subsections (2)(c) and (3).

(6) In this section—

“enforcement powers” means 5  
the powers under—

(a) Article 58(1)(c) and (d) and (2) (a) and (b) of the UK GDPR,

(b) sections 142 to 159 of this Act,

(c) paragraph 2(a), (b) and (c) 10  
of Schedule 13 to this Act,

(d) Schedules 15 and  
16 to this Act;

“the law enforcement purposes” 15  
has the meaning given in  
section 31 of this Act;

“the reporting period” means the  
period to which the report relates;

“UK GDPR investigation” means 20  
an investigation required under  
Article 57(1)(h) of the UK

GDPR (investigations on the application of the UK GDPR).”

## 41 Complaints to controllers

In the 2018 Act, before section 165 (but after the cross-heading preceding it) insert—

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### “164A Complaints by data subjects to controllers

(1) A data subject may make a complaint to the controller if the data subject considers that, in connection with personal data relating to the data subject, there is an infringement of the UK GDPR or Part 3 of this Act.

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(2) A controller must facilitate the making of complaints under this section by taking steps such as providing a complaint form which can be completed electronically and by other means.

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(3) If a controller receives a complaint under this section, the controller must acknowledge receipt of the complaint

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within the period of 30 days beginning with the day on which it is received.

- (4) If a controller receives a complaint under this section, the controller must without undue delay— 5
- (a) take appropriate steps to respond to the complaint, and
  - (b) inform the complainant of the outcome of the complaint.
- (5) The reference in subsection (4) 10
- (a) to taking appropriate steps to respond to the complaint includes—
  - (a) making enquiries into the subject matter of the complaint, to the extent appropriate, and 15
  - (b) informing the complainant about progress on the complaint.
- 164B Controllers to notify the Commissioner of the number of complaints** 20
- (1) The Secretary of State may by regulations require a controller

- to notify the Commissioner of the number of complaints made to the controller under section 164A in periods specified or described in the regulations. 5
- (2) Regulations under this section may provide that a controller is required to make a notification to the Commissioner in respect of a period only in circumstances specified in the regulations. 10
- (3) Regulations under this section may include—
- (a) provision about a matter listed in subsection (4), or 15
  - (b) provision conferring power on the Commissioner to determine those matters.
- (4) The matters are—
- (a) the form and manner in which a notification must be made, 20

- (b) the time at which, or period within which, a notification must be made, and
    - (c) how the number of complaints made to a controller during a period is to be calculated. 5
  - (5) Regulations under this section are subject to the negative resolution procedure.”
- 42 Power of the Commissioner to refuse to act on certain complaints 10**
- (1) The 2018 Act is amended as follows.
- (2) In section 165 (complaints by data subject to the Commissioner)—
  - (a) omit subsection (1), 15
  - (b) in subsection (2), after “infringement of” insert “the UK GDPR or”, and
  - (c) after subsection (5) insert—
    - “(5A) Subsection (4) does not apply if the Commissioner refuses 20

to act on the complaint in  
reliance on section 165A.”

(3) After section 165 insert—

**“165A Power of Commissioner to refuse  
to act on certain complaints**

5

(1) The Commissioner may refuse to  
act on a complaint under section  
165 if condition A, B or C is met.

(2) Condition A is that—

(a) the complaint concerns an  
infringement of the UK GDPR  
or Part 3 of this Act, and

10

(b) the complaint has not been  
made to the controller  
under section 164A.

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(3) Condition B is that—

(a) the complaint has been  
made to the controller  
under section 164A,

(b) the controller has not finished  
handling the complaint in

20

- accordance with subsection  
(4) of that section, and
- (c) the period of 45 days beginning  
with the day the complaint was  
made to the controller under  
that section has not expired. 5
- (4) Condition C is that the complaint  
is vexatious or excessive  
(see section 204A).
- (5) In any proceedings where there is  
an issue as to whether a complaint  
is vexatious or excessive, it is for the  
Commissioner to show that it is. 10
- (6) If the Commissioner refuses to  
act on a complaint under section  
165, the Commissioner must  
inform the complainant of— 15
- (a) the refusal and the  
reasons for it, and
- (b) the right under section 166A. 20
- (7) If the Commissioner refuses to act on  
a complaint under section 165 that

does not prevent the complainant making the complaint again.

**165B Guidance about responding to complaints and refusing to act**

- (1) The Commissioner must produce and publish guidance about—
- (a) how the Commissioner proposes to respond to complaints made under section 165, and 10
  - (b) how the Commissioner proposes to exercise the discretion conferred by section 165A to refuse to act on a complaint. 15
- (2) The Commissioner—
- (a) may alter or replace guidance produced under this section, and
  - (b) must publish any altered or replacement guidance. 20
- (3) Before producing guidance under

this section (including any altered or replacement guidance), the Commissioner must consult—

(a) the Secretary of State, and

(b) such other persons as the Commissioner considers appropriate. 5

(4) The Commissioner must arrange for any guidance under this section (including any altered or replacement guidance) to be laid before Parliament. 10

(4) In section 166 (orders to progress complaints), after subsection (1) insert—

“(1A) But this section does not apply if the Commissioner refuses to act on the complaint in reliance on section 165A.” 15

(5) After section 166 insert—

**“166A Appeals against refusal of Commissioner to act on complaint 20**

(1) Where the Commissioner

refuses to act on a complaint in reliance on section 165A, the person who made the complaint may appeal to the Tribunal.

- (2) The Tribunal may review any determination of fact on which the refusal to act was based. 5
- (3) If the Tribunal considers—
- (a) that the refusal to act is not in accordance with the law, or 10
  - (b) that the Commissioner ought not to have exercised the discretion to refuse to act,
- the Tribunal must allow the appeal.
- (4) Otherwise, the Tribunal must dismiss the appeal.” 15

### **43 Complaints: minor and consequential amendments**

Schedule 8 contains minor and consequential amendments relating to complaints by data subjects. 20

## 44 Consequential amendments to the EITSET Regulations

- (1) Schedule 2 to the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (S.I. 2016/696) (Commissioner’s enforcement powers) is amended as follows. 5
- (2) In paragraph 1 (provisions of the 2018 Act applied for enforcement purposes)—
- (a) after paragraph (g) insert— 10
- “(ga) section 146A (assessment notices: approval of person to prepare report etc);”, and
- (b) after paragraph (i) insert—
- “(ia) section 148A 15  
(interview notices);
- (ib) section 148B (interview notices: restrictions);
- (ic) section 148C (false statements made 20  
in response to  
interview notices);”.

- (3) In paragraph 4(2) (modification of section 143 (information notices: restrictions))—
- (a) in paragraph (b), for “or 148” substitute “, 148 or 148C”, and
  - (b) in paragraph (c), after “148” insert “or 148C”. 5
- (4) In paragraph 6 (modification of section 146 (assessment notices)), in sub-paragraph (2)—
- (a) for paragraph (b) substitute— 10
    - “(b) subsection (2) has effect as if—
      - (i) for “controller or processor” there were substituted “trust service provider”; 15
      - (ii) paragraphs (h) and (i) were omitted;”,
  - (b) in paragraph (c), for “subsections (7), (8), (9) and (10)” substitute “subsections (3A), (7), (8), (9), (10) and (11A)”, and 20

(c) in paragraph (d), for “or 148”  
substitute “, 148 or 148C”.

(5) After paragraph 6 insert—

*“Modification of section 146A  
(assessment notices: approval of  
person to prepare report etc)*

5

6A Section 146A has effect as if for  
“controller or processor” (in each  
place) there were substituted  
“trust service provider”.

10

(6) After paragraph 7 insert—

*“Modification of section 148A (interview notices)*

7A Section 148A has effect as if—

(a) in subsection (1)—

(i) for “controller or  
processor” there were  
substituted “trust  
service provider”;

15

(ii) in paragraph (a),  
for “as described in  
section 149(2)” there

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were substituted “to comply with the eIDAS requirements”;

(iii) in paragraph (b), for “this Act” there were substituted “section 144, 148 or 148C or paragraph 15 of Schedule 15”;

5

(b) in subsection (3), for “controller or processor” (in each place) there were substituted “trust service provider”.

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*Modification of section 148B  
(interview notices: restrictions)*

7B(1) Section 148B has effect as if subsections (8) and (9) were omitted.

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(2) In that section—

(a) subsections (2)(b) and (3)(b) have effect as if for “the data protection legislation” there were substituted “the eIDAS Regulation or the EITSET Regulations”;

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- (b) subsection (6)(a) has effect as if for “this Act” there were substituted “section 144, 148 or 148C or paragraph 15 of Schedule 15”;
- (c) subsection (7) has effect as if for “this Act (other than an offence under section 148C)” there were substituted “section 144 or 148 or paragraph 15 of Schedule 15”.
- (7) In paragraph 12 (modification of Schedule 15 (powers of entry and inspection)), in subparagraph (2), in the substituted paragraph (a), for “or 148” substitute “, 148 or 148C”. 10
- (8) In paragraph 13 (modification of section 155 (penalty notices)), in subparagraph (3)(c), for “for “data subjects”” there were substituted “for the words from “data subjects” to the end”. 15
- (9) Omit paragraph 21 (modification of section 182 (regulations and consultation)) and the heading before it. 20

(10) In paragraph 22 (modification of section 196 (penalties for offences)), in sub-paragraph (2)(b)—

(a) after “148”, in the first place it occurs, insert “, 148C”, and

5

(b) for “or 148” substitute “, 148 or 148C”.

*Protection of prohibitions, restrictions and data subject’s rights*

**45 Protection of prohibitions, restrictions and data subject’s rights**

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(1) The 2018 Act is amended in accordance with subsections (2) and (3).

(2) After section 183 insert—

*“Prohibitions and restrictions etc on processing*

**183A Protection of prohibitions and restrictions etc on processing**

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(1) A relevant enactment or rule of law which imposes a duty, or confers a power, to process personal data does not override a

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requirement under the main data protection legislation relating to the processing of personal data.

- (2) Subsection (1) does not apply—
- (a) to a relevant enactment forming part of the main data protection legislation, or 5
  - (b) to the extent that an enactment makes express provision to the contrary referring to this section or to the main data protection legislation (or a provision of that legislation). 10
- (3) Subsection (1) does not prevent a duty or power to process personal data from being taken into account for the purpose of determining whether it is possible to rely on an exception to a requirement under the main data protection legislation that is available where there is such a duty or power. 15 20
- (4) In this section—

“the main data protection legislation” means the data protection legislation other than provision of or made under—

(a) Chapter 6 or 8 of the UK GDPR, or

5

(b) Parts 5 to 7 of this Act;

“relevant enactment” means an enactment so far as passed or made on or after the day on which section 45 of the Data Protection and Digital Information Act 2023 comes into force;

10

“requirement” includes a prohibition or restriction.

15

- (5) The reference in subsection (1) to an enactment or rule of law which imposes a duty, or confers a power, to process personal data is a reference to an enactment or rule of law which, directly or indirectly, requires or authorises the processing of personal data, including (for example)—

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- (a) by authorising one person to require another person to process personal data, or
  - (b) by removing restrictions on processing personal data, 5

and the references in subsection (3) to a duty or power are to be read accordingly.”
- (3) In section 186 (data subject’s rights and other prohibitions and restrictions)— 10
  - (a) for the heading substitute “Protection of data subject’s rights”,
  - (b) in subsection (1) omit “, except as provided by or under the provisions listed in subsection (3)”, 15
  - (c) after subsection (2) insert—
    - “(2A) Subsection (1) does not apply—
      - (a) to an enactment contained in, or made under, a provision falling within subsection (2) or (3), or 20

- (b) to the extent that an enactment makes express provision to the contrary referring to this section or to a provision falling within subsection (2).”, and 5
- (d) in subsection (3)—
- (i) for “provisions providing exceptions” substitute “further provisions referred to in subsection (2A)(a)”, and 10
- (ii) omit paragraph (c) (and the “and” after it).
- (4) In section 5 of the European Union (Withdrawal) Act 2018 (exceptions to savings and incorporation), 15
- in subsection (A3)(a)—
- (a) for “section” substitute “sections 183A and”, and
- (b) for “(data subject’s rights and other prohibitions and restrictions)” substitute “(protection of prohibitions, restrictions and data subject’s rights)”. 20

*Miscellaneous***46 Regulations under the UK GDPR**

(1) In the UK GDPR, after Chapter 9 insert—

**“CHAPTER 9A****REGULATIONS**

5

**Regulations made by Secretary of State**

- Article 91A — 1. This Article makes provision about regulations made by the Secretary of State under this Regulation (“UK GDPR regulations”). 10
2. Before making UK GDPR regulations, the Secretary of State must consult—
- the Commissioner, and such other persons as the Secretary of State considers appropriate. 3. Paragraph 2 does not apply to regulations made under Article 49 or 49A where the Secretary of State has made an urgency statement in respect of them. 15
4. UK GDPR regulations may—
- make different provision for different 20

purposes; include consequential, supplementary, incidental, transitional, transitory or saving provision.<sup>5</sup>

UK GDPR regulations are to be made by statutory instrument. 5

6. For the purposes of this Regulation, where regulations are subject to “the negative resolution procedure”, the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament. 10
  7. For the purposes of this Regulation, where regulations are subject to “the affirmative resolution procedure”, the regulations may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament. 15
  8. For the purposes of this Regulation, where regulations are subject to “the made affirmative resolution procedure”— 20
- the statutory instrument containing the regulations must be laid before Parliament after being made, together with the urgency

statement in respect of them, and the regulations cease to have effect at the end of the period of 120 days beginning with the day on which the instrument is made, unless within that period the instrument is approved by a resolution of each House of Parliament.<sup>9</sup> In calculating the period of 120 days, no account is to be taken of any whole days that fall within a period during which— 5 10

Parliament is dissolved or prorogued, or both Houses of Parliament are adjourned for more than 4 days.<sup>10</sup> Where regulations cease to have effect as a result of paragraph 8, that does not— 15

affect anything previously done under the regulations, or prevent the making of new regulations.<sup>11</sup> Any provision that may be included in UK GDPR regulations subject to the negative resolution procedure may be made by regulations made under this Regulation or another enactment that are subject to 20

the affirmative resolution procedure or the made affirmative resolution procedure.

12. A requirement under this Article to consult may be satisfied by consultation before, as well as by consultation after, the provision conferring the power to make regulations comes into force. 5
13. In this Article, “urgency statement”, in relation to regulations, means a reasoned statement that the Secretary of State considers it desirable for the regulations to come into force without delay.” 10
- (2) In section 3(9) of the 2018 Act (definition of “data protection legislation”), in paragraph (d), after “Act” insert “or the UK GDPR”. 15

## 47 Minor amendments

Schedule 9 contains minor amendments of the UK GDPR and the 2018 Act.

## Part 2

### DIGITAL VERIFICATION SERVICES

#### *Introductory*

#### **48 Introductory**

- (1) This Part contains provision to secure the reliability of digital verification services by means of— 5
- (a) a trust framework (see section 49),
  - (b) a register (see section 50),
  - (c) an information gateway (see section 56), and 10
  - (d) a trust mark (see section 61).
- (2) In this Part—
- “digital verification services” means verification services provided to any extent by means of the internet, and 15
- “verification services” means services that are provided at the request of an individual and consist in—
- (a) ascertaining or verifying a 20

fact about the individual from information provided otherwise than by the individual, and

- (b) confirming to another person that the fact about the individual has been ascertained or verified from information so provided.

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*DVS trust framework*

**49 DVS trust framework**

- (1) The Secretary of State must prepare and publish a document setting out rules concerning the provision of digital verification services.

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- (2) The document is referred to in this Part as the DVS trust framework.

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- (3) In preparing the DVS trust framework, the Secretary of State must consult—

- (a) the Information Commissioner, and  
(b) such other persons as the Secretary of State thinks appropriate.

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- 
- (4) The requirement in subsection (3) may be satisfied by consultation undertaken before the coming into force of this section.
- (5) At least every 12 months, the Secretary of State must— 5
- (a) carry out a review of the DVS trust framework, and
  - (b) in doing so, consult the persons mentioned in subsection (3).
- (6) The Secretary of State may revise and republish the DVS trust framework, whether following a review under subsection (5) or otherwise. 10
- (7) The DVS trust framework, and any revised version of the framework, comes into force at the time of its publication, unless it specifies a different commencement time. 15
- (8) The DVS trust framework, and any revised version of the framework, may— 20
- (a) specify different commencement times for different purposes, and

- (b) include transitional provisions and savings.

### *DVS register*

## **50 DVS register**

- (1) The Secretary of State must establish and maintain a register of persons providing digital verification services. 5
- (2) The register is referred to in this Part as the DVS register.
- (3) The Secretary of State must make the DVS register publicly available. 10
- (4) The Secretary of State must, subject to section 54(9), register a person providing digital verification services in the DVS register if— 15
  - (a) the person holds a certificate from an accredited conformity assessment body certifying that the digital verification services provided by the person are provided in accordance with the DVS trust framework, 20

- (b) the person applies to be registered in the DVS register in respect of the digital verification services to which the certificate relates,
  - (c) the application complies with any requirements imposed by a determination under section 51, and 5
  - (d) the person pays any fee required to be paid by a determination under section 52(1). 10
- (5) The Secretary of State may not otherwise register a person in the DVS register.
- (6) For the purposes of subsection (4)
  - (a), a certificate is to be ignored if—
    - (a) it has expired in accordance with its terms, 15
    - (b) it has been withdrawn by the body that issued it, or
    - (c) it is required to be ignored by reason of provision included in the DVS trust framework under section 55. 20
- (7) In this section—

- “accredited conformity assessment body” means a conformity assessment body that is accredited by the UK national accreditation body in accordance with Article 5 of the Accreditation Regulation as competent to carry out assessments of whether digital verification services are provided in accordance with the DVS trust framework; 5
- “the Accreditation Regulation” means Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93; 10 15
- “conformity assessment body” has the same meaning as in the Accreditation Regulation (see Article 2(13) of that Regulation); 20

“the UK national accreditation body”  
means the UK national accreditation  
body for the purposes of Article 4(1)  
of the Accreditation Regulation.

## **51 Applications for registration**

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(1) The Secretary of State may determine—

(a) the form of an application for  
registration in the DVS register,

(b) the information to be contained  
in or provided with an application  
for registration in that register,

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(c) the documents to be provided  
with an application for registration  
in that register, and

(d) the manner in which an  
application for registration in that  
register is to be submitted.

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(2) A determination may make different  
provision for different purposes.

(3) The Secretary of State must  
publish a determination.

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- (4) The Secretary of State may revise a determination.
- (5) If the Secretary of State revises a determination the Secretary of State must publish the determination as revised. 5

## 52 Fees for registration

- (1) The Secretary of State may determine that a person who applies for registration in the DVS register must pay a fee to the Secretary of State of an amount specified in the determination. 10
- (2) A determination under subsection (1) may specify an amount which exceeds the administrative costs of determining an application for registration. 15
- (3) The Secretary of State may determine that a person who is registered in the DVS register must, at times specified in the determination, pay a fee to the Secretary of State of an amount specified in the determination. 20

- (4) A determination under subsection (3) may specify an amount which exceeds the administrative costs associated with a person's continued registration in the DVS register. 5
- (5) A fee payable under subsection (3) is recoverable summarily as a civil debt.
- (6) A determination may make different provision for different purposes.
- (7) The Secretary of State must publish a determination. 10
- (8) The Secretary of State may revise a determination.
- (9) If the Secretary of State revises a determination the Secretary of State must publish the determination as revised. 15

### **53 Duty to remove person from the DVS register**

- (1) The Secretary of State must remove a person from the DVS register if the person— 20
- (a) asks to be removed from the register,

- (b) ceases to provide digital verification services in respect of which the person is registered in the register, or
  - (c) no longer holds a certificate from an accredited conformity assessment body certifying that those digital verification services are provided in accordance with the DVS trust framework. 5
- (2) For the purposes of subsection (1)
  - (c), a certificate is to be ignored if— 10
    - (a) it has expired in accordance with its terms,
    - (b) it has been withdrawn by the body that issued it, or
    - (c) it is required to be ignored by reason of provision included in the DVS trust framework under section 55. 15
- (3) In this section, “accredited conformity assessment body” has the same meaning as in section 50. 20

## 54 Power to remove person from the DVS register

- (1) The Secretary of State may remove a person from the DVS register if the Secretary of State is satisfied that— 5
  - (a) the person is failing to provide digital verification services in respect of which the person is registered in accordance with DVS trust framework, or
  - (b) the person has failed to provide the Secretary of State with information in accordance with a notice under section 62. 10
- (2) Before removing a person from the DVS register under this section the Secretary of State must, by written notice, inform the person that the Secretary of State intends to do so. 15
- (3) The notice must—
  - (a) state the name and address of the person, 20

- (b) state the reason why the Secretary of State is satisfied that the person is failing or has failed as mentioned in subsection (1),
  - (c) state the period the Secretary of State intends to specify in the notice under subsection (8), 5
  - (d) state that the person may make written representations to the Secretary of State about— 10
    - (i) the Secretary of State's intention to remove the person from the DVS register, and
    - (ii) the period the Secretary of State intends to specify in the notice under subsection (8), and 15
  - (e) specify the period within which such representations may be made.
- (4) The period specified for making written representations must be a period of not less than 21 days beginning with the day the notice is given. 20

- (5) If the Secretary of State considers that it is appropriate for the person to have an opportunity to make oral representations about the matters mentioned in subsection (3)(d), the notice must also— 5
- (a) state that the person may make such representations, and
  - (b) specify the arrangements for making such representations and the time at which, or the period 10 within which, they may be made.
- (6) The Secretary of State may not remove the person from the DVS register before a time, or before the end of a period, specified in the notice for making 15 oral or written representations.
- (7) When deciding whether to remove the person from the DVS register, the Secretary of State must consider any oral or written representations made by the 20 person in accordance with the notice.
- (8) Where the Secretary of State removes the person from the DVS register, the

Secretary of State must by written notice inform the person—

- (a) that the person has been removed from the register, and
  - (b) that any application for re-registration made by the person during a period specified in the notice must be refused. 5
- (9) If the person applies to be re-registered during the period specified in the notice under subsection (8)(b) the Secretary of State must refuse the application. 10
- (10) The period specified in the notice under subsection (8)(b) must begin with the day the notice is given and must not exceed two years. 15

## **55 Revising the DVS trust framework: top-up certificates**

- (1) This section applies where the Secretary of State revises and republishes the DVS trust framework and the revisions include— 20
- (a) the addition of a rule, or
  - (b) the alteration of an existing rule.

- (2) The DVS trust framework may provide that, on and after a specified date, a pre-revision certificate is required to be ignored for the purposes of sections 50(4)(a) and 53(1)(c), unless the person holding the certificate also holds a top-up certificate from an accredited conformity assessment body. 5
- (3) In this section—
- “accredited conformity assessment body” has the same meaning as in section 50; 10
- “pre-revision certificate” means a certificate issued before the time the additional rule or (as the case may be) the alteration of the existing rule comes into force;
- “specified” means specified in the DVS trust framework; 15
- “top-up certificate” means a certificate certifying that the digital verification services provided by the holder of the certificate are provided in accordance with the additional rule or (as the case may be) the existing rule, as altered. 20

*Information gateway***56 Power of public authority to disclose information to registered person**

- (1) This section applies where—
- (a) a person is registered in the DVS register, and 5
  - (b) an individual makes a request to the person for the provision of digital verification services in respect of which the person is registered. 10
- (2) A public authority may disclose to the person information relating to the individual for the purpose of enabling the person to provide the digital verification services for the individual. 15
- (3) A disclosure of information under this section does not breach—
- (a) any obligation of confidence owed by the public authority making the disclosure, or 20
  - (b) any other restriction on the disclosure of information (however imposed).

- (4) But this section does not authorise a disclosure of information which—
- (a) would contravene the data protection legislation (but in determining whether a disclosure would do so, the power conferred by this section is to be taken into account), or 5
  - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016. 10
- (5) This section does not authorise a public authority to disclose information obtained by the authority otherwise than in connection with the exercise by the authority of functions of a public nature. 15
- (6) This section does not affect a power to disclose information that exists apart from this section.
- (7) A public authority may charge a person fees in respect of the disclosure to the person of information under this section. 20
- (8) In this section—

“data protection legislation” has the same meaning as in the 2018 Act (see section 3(9) of that Act);

“public authority” means a person exercising functions of a public nature.

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## **57 Information disclosed by the Revenue and Customs**

(1) This section applies where the Revenue and Customs disclose personal information to a person under section 56 for the purpose of enabling the person to provide digital verification services for an individual.

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(2) The person must not further disclose the information otherwise than for the purpose of providing digital verification services for the individual, except with the consent of the Commissioners for His Majesty’s Revenue and Customs.

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(3) Any other person who receives the information, whether directly or indirectly from the person to whom the Revenue and Customs disclose the information, must not further disclose the information, except

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with the consent of the Commissioners for His Majesty's Revenue and Customs.

- (4) If a person discloses information in contravention of this section, section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of information in contravention of section 20(9) of that Act. 5 10
- (5) In this section—
- “personal information” means information relating to a person whose identity—
- (a) is specified in the information, or
  - (b) can be deduced from it; 15
- “the Revenue and Customs” has the meaning given by section 17(3) of the Commissioners for Revenue and Customs Act 2005.

## 58 Information disclosed by the Welsh Revenue Authority

- (1) This section applies where the Welsh Revenue Authority discloses personal information to a person under section 56 for the purpose of enabling the person to provide digital verification services for an individual. 5
- (2) The person must not further disclose the information otherwise than for the purpose of providing digital verification services for the individual, except with the consent of the Welsh Revenue Authority. 10
- (3) Any other person who receives the information, whether directly or indirectly from the person to whom the Welsh Revenue Authority discloses the information, must not further disclose the information, except with the consent of the Welsh Revenue Authority. 15 20
- (4) A person who discloses information in contravention of subsection (2) or (3) commits an offence.

- (5) It is a defence for a person charged with an offence under subsection (4) to prove that the person reasonably believed—
- (a) that the disclosure was lawful, or
  - (b) that the information had already lawfully been made available to the public. 5
- (6) A person who commits an offence under subsection (4) is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both); 10
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both); 15
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both); 20

(d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

(7) In this section, “personal information” means information relating to a person whose identity—

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(a) is specified in the information, or

(b) can be deduced from it.

## **59 Information disclosed by Revenue Scotland**

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(1) This section applies where Revenue Scotland discloses personal information to a person under section 56 for the purpose of enabling the person to provide digital verification services for an individual.

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(2) The person must not further disclose the information otherwise than for the purpose of providing digital verification services for the individual, except with the consent of Revenue Scotland.

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(3) Any other person who receives the information, whether directly or indirectly

from the person to whom Revenue Scotland discloses the information, must not further disclose the information, except with the consent of Revenue Scotland.

- (4) A person who discloses information in contravention of subsection (2) or (3) commits an offence. 5
- (5) It is a defence for a person charged with an offence under subsection (4) to prove that the person reasonably believed— 10
- (a) that the disclosure was lawful, or
  - (b) that the information had already lawfully been made available to the public.
- (6) A person who commits an offence under subsection (4) is liable— 15
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both); 20

- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both); 5
    - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (7) In this section, “personal information” means information relating to a person whose identity— 10
  - (a) is specified in the information, or
  - (b) can be deduced from it.
- 60 Code of practice about the disclosure of information** 15
- (1) The Secretary of State must prepare and publish a code of practice about the disclosure of information under section 56.
- (2) The code of practice must be consistent with the code of practice prepared under section 121 of the 2018 Act (data-sharing code) and issued under 20

section 125(4) of that Act (as altered or replaced from time to time).

- (3) A public authority must have regard to the code of practice in disclosing information under section 56. 5
- (4) The Secretary of State may from time to time revise and republish the code of practice.
- (5) In preparing or revising the code of practice, the Secretary of State must consult— 10
- (a) the Information Commissioner, and
  - (b) such other persons as the Secretary of State thinks appropriate.
- (6) The requirement in subsection (5) may be satisfied by consultation undertaken before the coming into force of this section. 15
- (7) The Secretary of State may not publish the first version of the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament. 20

- (8) The Secretary of State may not republish the code of practice following its revision unless—
- (a) a draft of the code as revised has been laid before each House of Parliament, and 5
  - (b) the 40-day period has expired without either House of Parliament resolving not to approve the draft.
- (9) “The 40-day period” means— 10
- (a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or
  - (b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament. 15
- (10) In calculating the 40-day period, no account is to be taken of any whole days that fall within a period during which Parliament is dissolved or prorogued 20

or during which both Houses are adjourned for more than 4 days.

- (11) In this section, “public authority” means a person exercising functions of a public nature.

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### *Trust mark*

## **61 Trust mark for use by registered persons**

- (1) The Secretary of State may designate a mark for use in the course of providing, or offering to provide, digital verification services.
- (2) A mark designated under this section must be published by the Secretary of State.
- (3) A mark designated under this section may not be used by a person in the course of providing, or offering to provide, digital verification services unless the person is registered in the DVS register in respect of those digital verification services.
- (4) The Secretary of State may enforce subsection (3) in civil proceedings for an injunction or, in Scotland, an interdict.

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*Supplementary***62 Power of Secretary of State to require information**

- (1) The Secretary of State may by written notice require— 5
- (a) an accredited conformity assessment body, or
  - (b) a person registered in the DVS register, to provide the Secretary of State with information that the Secretary of State reasonably requires for the purposes of the exercise of the Secretary of State’s functions under this Part. 10
- (2) A notice under this section must state why the information is required for the purposes of the exercise of those functions. 15
- (3) A notice under this section—
- (a) may specify or describe particular information or a category of information; 20
  - (b) may specify the form in which the information must be provided;

- (c) may specify the time at which, or the period within which, the information must be provided;
  - (d) may specify the place where the information must be provided. 5
- (4) A notice under this section that is given to a person registered in the DVS register must provide information about the consequences under section 54 of failure to comply with the notice. 10
- (5) The Secretary of State may cancel a notice under this section by notice to the person to whom it was given.
- (6) A disclosure of information required by a notice under this section does not breach— 15
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (7) But a notice under this section does not require a disclosure of information if the disclosure— 20

- (a) would contravene section 57, 58 or 59,
  - (b) would contravene the data protection legislation (but in determining whether a disclosure would do so, the duty imposed by the notice is to be taken into account), or 5
  - (c) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (8) A notice under this section does not require a person to provide the Secretary of State with information in respect of a communication which is made— 10
  - (a) between a professional legal adviser and the adviser's client, and 15
  - (b) in connection with the giving of legal advice to the client with respect to obligations, liabilities or rights under this Part.
- (9) In subsection (8) references to the client of a professional legal adviser include references to a person acting on behalf of the client. 20

- (10) A notice under this section does not require a person to provide the Secretary of State with information if doing so would, by revealing evidence of the commission of an offence, expose the person to proceedings for that offence. 5
- (11) The reference to an offence in subsection (10) does not include an offence under—
- (a) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath); 10
  - (b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath); 15
  - (c) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statutory declarations and other false unsworn statements).
- (12) In this section— 20
- “accredited conformity assessment body” has the same meaning as in section 50;

“data protection legislation” has the same meaning as in the 2018 Act (see section 3(9) of that Act).

### **63 Arrangements for third party to exercise functions**

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- (1) The Secretary of State may make arrangements for a person prescribed by regulations under this section to exercise functions of the Secretary of State under this Part (and where arrangements are made, references in this Part to the Secretary of State are to be read accordingly). 10
- (2) Arrangements under this section may—
- (a) provide for the Secretary of State to make payments to the person, and 15
  - (b) make provision as to the circumstances in which any such payments are to be repaid to the Secretary of State.
- (3) Regulations under this section are subject to the affirmative resolution procedure. 20

## 64 Report on the operation of this Part

- (1) The Secretary of State must prepare and publish reports on the operation of this Part.
- (2) The first report must be published within the period of 12 months beginning with the day on which section 49 comes into force. 5
- (3) The reports must be published not more than 12 months apart.

### Part 3

#### CUSTOMER DATA AND BUSINESS DATA 10

## 65 Customer data and business data

- (1) This Part confers powers on the Secretary of State and the Treasury to make provision in connection with access to customer data and business data. 15
- (2) In this Part—  
“business data”, in relation to a trader, means—
  - (a) information about goods, services and digital content supplied 20

or provided by the trader,

- (b) information relating to the supply or provision of goods, services and digital content by the trader (such as, for example, information about where they are supplied or provided, the terms on which they are supplied or provided, prices or performance), 5
  - (c) information relating to feedback from customers about the goods, services or digital content, and 10
  - (d) information relating to the provision of business data to a person in accordance with data regulations;
- “customer data” means information relating to a customer of a trader, including— 15
- (a) information relating to transactions between a customer and the trader, and
  - (b) information relating to the provision of customer data to a person in accordance with data regulations; 20

“data holder”, in relation to customer data or business data of a trader, means—

(a) the trader, or

(b) a person who, in the course of a business, processes the data;

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“data regulations” means regulations under section 66 or 68;

“trader” means a person who supplies or provides goods, services or digital content in the course of a business, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf.

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(3) For the purposes of this Part, a person (“C”) is a customer of a trader (“T”) if—

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(a) C has at any time purchased goods, services or digital content supplied or provided by T (whether for use by C or another person) or received such goods, services or digital content free of charge from T, and

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(b) the purchase or receipt occurred—

- (i) otherwise than in the course of a business, or
  - (ii) in the course of a business of a description for the time being specified by the Secretary of State or the Treasury by regulations. 5
- (4) In subsection (3)(a), the references to purchase or receipt of goods, services or digital content at any time include purchase or receipt before this section comes into force. 10
- (5) In this Part—
  - (a) a reference to providing customer data or business data to a person includes a reference to providing the person with access to such data or with the ability to provide other persons with access to such data, and 15
  - (b) a reference to a person receiving customer data or business data includes a reference to a person obtaining access to such data or the ability to provide other persons with access to such data. 20

## 66 Power to make provision in connection with customer data

- (1) The Secretary of State or the Treasury may by regulations make provision requiring a data holder to provide customer data— 5
- (a) to the customer, at the customer's request, or
  - (b) to a person who is authorised by the customer to receive the data (an "authorised person"), at the customer's request or at the authorised person's request. 10
- (2) The Secretary of State or the Treasury may by regulations make provision enabling or requiring a data holder— 15
- (a) to produce, collect or retain, or arrange for the production, collection or retention of, customer data;
  - (b) to make changes to customer data, including to require rectification of inaccurate customer data, at the request of a customer or authorised person. 20

- (3) The Secretary of State or the Treasury may by regulations make provision for a person who is an authorised person in relation to customer data to exercise, on the customer's behalf, some or all of the customer's rights in relation to goods, services or digital content supplied or provided by a person who is, or has been, a data holder in relation to the customer data. 5
- (4) In deciding whether to make regulations under this section, the Secretary of State or the Treasury must have regard to (among other things)— 10
- (a) the likely effects for existing and future customers, 15
- (b) the likely effects for data holders,
- (c) the likely effect on small businesses and micro businesses,
- (d) the likely effect on innovation in the supply or provision of goods, services and digital content affected by the regulations or other goods, services and digital content, and 20

- (e) the likely effect on competition in markets for goods, services and digital content affected by the regulations or other markets.

## **67 Customer data: supplementary**

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- (1) This section is about provision that regulations under section 66 may (among other things) contain.
- (2) The regulations may make provision about requests relating to customer data, including provision about the circumstances in which a data holder may or must refuse to act on a request. 10
- (3) The regulations may make provision about the procedure by which customers authorise persons to receive customer data or to do other things, including— 15
  - (a) provision restricting the persons that may be authorised to persons that comply with specified conditions or conditions imposed by a specified person; 20

- (b) provision for a specified person (a “decision-maker”) to decide whether a person satisfies the conditions for authorisation (and see section 70 for further provision about decision-makers). 5
- (4) The regulations may make provision about the providing of customer data and the exercising of customers’ rights, including—
  - (a) provision requiring customer data to be provided on one or more occasions, for a specified period or at specified intervals; 10
  - (b) provision requiring the use of specified facilities or services, including dashboard services, other electronic communications services or application programme interfaces; 15
  - (c) provision requiring a data holder to participate in, or comply with, arrangements for establishing, maintaining or managing such facilities or services; 20

- (d) provision requiring a data holder to provide, or arrange for, assistance in connection with the establishment, maintenance or management of such facilities or services. 5
- (5) The regulations may include—
- (a) provision enabling or requiring a data holder to produce, collect or retain, or arrange for the production, collection or retention of, records of customer data provided in accordance with the regulations; 10
- (b) provision enabling or requiring an authorised person to produce or retain, or arrange for the production or retention of, records of customer data received in accordance with the regulations. 15
- (6) The regulations may make provision requiring a person who, in the course of a business, processes customer data of a trader to assist, or take specified steps to assist, the trader in complying with regulations under this Part. 20

- (7) The regulations may make provision about the processing of customer data provided to an authorised person in accordance with the regulations, including—
- (a) provision requiring the use of specified facilities or services, including dashboard services, other electronic communications services or application programme interfaces; 5
  - (b) provision requiring the authorised person to participate in, or comply with, arrangements for establishing, maintaining or managing such facilities or services; 10
  - (c) provision requiring the authorised person to provide, or arrange for, assistance in connection with the establishment, maintenance or management of such facilities or services; 15
  - (d) provision about further disclosure of the data, including provision for a person to whom customer data is further disclosed to be subject to— 20

- (i) some or all of the obligations imposed on an authorised person by the regulations in relation to the customer data;
  - (ii) conditions imposed by the authorised person. 5
- (8) The regulations may make provision enabling or requiring a data holder or an authorised person to publish specified information relating to the rights and obligations of persons under the regulations, including— 10
  - (a) information about the rights of customers in relation to customer data processed by the data holder or authorised person; 15
  - (b) information about the activities carried out by the data holder or authorised person in performance of their obligations under the regulations. 20
- (9) The regulations may make provision about complaints, including provision requiring data holders, authorised

persons or decision-makers to implement procedures for the handling of complaints.

- (10) The regulations may make provision about procedures for the resolution of disputes, including— 5
- (a) provision appointing, or providing for the appointment of, a person to determine disputes;
  - (b) provision about the person's powers when determining disputes; 10
  - (c) provision about the effect of decisions relating to disputes;
  - (d) provision for the person to review the person's decisions relating to disputes;
  - (e) provision about appeals 15  
to a court or tribunal.

## **68 Power to make provision in connection with business data**

- (1) The Secretary of State or the Treasury may by regulations make provision requiring 20  
a data holder to publish business data or to provide business data on request—

- (a) to a customer of the trader, or
  - (b) to another person of a specified description (a “third party recipient”).
- (2) The Secretary of State or the Treasury may by regulations make provision enabling or requiring a data holder to produce, collect or retain, or arrange for the production, collection or retention of, business data. 5
- (3) In deciding whether to make regulations under this section, the Secretary of State or the Treasury must have regard to (among other things)— 10
  - (a) the likely effects for existing and future customers,
  - (b) the likely effects for data holders, 15
  - (c) the likely effect on small businesses and micro businesses,
  - (d) the likely effect on innovation in the supply or provision of goods, services and digital content affected by the regulations or other goods, services and digital content, and 20

- (e) the likely effect on competition in markets for goods, services and digital content affected by the regulations or other markets.

## **69 Business data: supplementary**

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- (1) This section is about provision that regulations under section 68 may (among other things) contain.
- (2) The regulations may make provision about requests for business data, including— 10
  - (a) provision for requests to be made by a customer, a third party recipient or another person;
  - (b) provision about the circumstances in which a data holder may or must refuse to act on a request. 15
- (3) The regulations may make provision requiring business data to be provided to persons approved to receive it (“approved persons”), including— 20
  - (a) provision restricting the persons that may be approved to persons

- that comply with specified conditions or conditions imposed by a specified person;
- (b) provision for a specified person (a “decision-maker”) to decide whether a person satisfies the conditions for approval (and see section 70 for further provision about decision-makers). 5
- (4) The regulations may make provision about the providing or publishing of business data, including— 10
- (a) provision requiring business data to be provided or published on one or more occasions, for a specified period or at specified intervals; 15
- (b) provision requiring the use of specified facilities or services, including dashboard services, other electronic communications services or application programme interfaces; 20
- (c) provision requiring a data holder to participate in, or comply with, arrangements for establishing,

maintaining or managing such facilities or services;

(d) provision requiring a data holder to provide, or arrange for, assistance in connection with the establishment, maintenance or management of such facilities or services. 5

(5) The regulations may include—

(a) provision enabling or requiring a data holder to produce, collect or retain, or arrange for the production, collection or retention of, records of business data provided in accordance with the regulations; 10

(b) provision enabling or requiring a third party recipient to produce or retain, or arrange for the production or retention of, records of business data received in accordance with the regulations. 15

(6) The regulations may make provision requiring a person who, in the course of a business, processes business data of a trader to assist, or take specified 20

steps to assist, the trader in complying with regulations under this Part.

- (7) The regulations may make provision about the processing of business data provided to a person in accordance with the regulations, including— 5
- (a) provision requiring the use of specified facilities or services, including dashboard services, other electronic communications services or application programme interfaces; 10
  - (b) provision requiring the person to participate in, or comply with, arrangements for establishing, maintaining or managing such facilities or services; 15
  - (c) provision requiring the person to provide, or arrange for, assistance in connection with the establishment, maintenance or management of such facilities or services; 20
  - (d) provision about further disclosure of the data, including provision for a person to whom business data

is further disclosed to be subject to some or all of the obligations imposed on customers or third party recipients by the regulations in relation to the business data.

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(8) The regulations may make provision enabling or requiring a data holder or an approved person to publish specified information relating to the rights and obligations of persons under the regulations, including information about the activities carried out by the data holder or approved person in performance of their obligations under the regulations.

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(9) The regulations may make provision about complaints, including provision requiring data holders or decision-makers to implement procedures for the handling of complaints.

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(10) The regulations may make provision about procedures for the resolution of disputes, including—

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- (a) provision appointing, or providing for the appointment of, a person to determine disputes;
- (b) provision about the person's powers when determining disputes; 5
- (c) provision about the effect of decisions relating to disputes;
- (d) provision for the person to review the person's decisions relating to disputes;
- (e) provision about appeals to a court or tribunal. 10

## 70 Decision-makers

- (1) This section is about the provision about decision-makers that regulations under section 66 or 68 must or may (among other things) contain. 15
- (2) The regulations may make provision about the appointment of a decision-maker.
- (3) The regulations may make provision enabling or requiring a decision-maker to suspend or revoke a decision. 20

- (4) The regulations may confer powers on a decision-maker for the purpose of monitoring compliance with conditions for authorisation or approval (“monitoring powers”) (and see section 71 for provision about enforcement of requirements imposed in exercise of those powers). 5
- (5) The powers that may be conferred under subsection (4) include powers to require the provision of information (but such powers are subject to the restrictions in section 72 as well as any restrictions included in the regulations). 10
- (6) The regulations must make provision about the rights of persons affected by the exercise of a decision-maker’s functions under the regulations and such provision may include (among other things)— 15
- (a) provision for decisions to be reviewed by the decision-maker or a specified person; 20
  - (b) provision about appeals to a court or tribunal.

- (7) The regulations may make provision enabling or requiring a decision-maker to publish, or provide to a specified person, specified information relating to the exercise of the decision-maker's functions. 5
- (8) The regulations may make provision for a decision-maker to arrange for its monitoring powers to be carried out by a specified person.
- (9) The regulations may— 10
- (a) provide for functions under the regulations to be exercisable by more than one decision-maker (whether jointly or concurrently);
- (b) where functions of decision-makers are exercisable concurrently— 15
- (i) provide for one of the decision-makers to be the lead decision-maker;
- (ii) require the other decision-makers to consult the lead decision-maker before exercising the functions in a particular case; 20

(iii) authorise the lead decision-maker to give directions as to which decision-maker is to exercise a function in a particular case.

- (10) The regulations may make provision enabling or requiring a decision-maker to produce and publish guidance about how it proposes to exercise its functions under the regulations (including provision enabling or requiring decision-makers with functions exercisable jointly or concurrently to produce joint guidance). 5 10

## 71 Enforcement of data regulations

- (1) The Secretary of State or the Treasury may by regulations make provision— 15
- (a) for the enforcement of data regulations, and
- (b) for the enforcement of requirements imposed in exercise of a power conferred by regulations under this Part, 20
- including provision for enforcement by a specified public body (an “enforcer”).

- (2) The following subsections and sections 72 and 73 make provision about what regulations under subsection (1) may or must (among other things) contain.
- (3) The regulations may confer powers of investigation on an enforcer, including— 5
- (a) powers to require the provision of information, and
  - (b) powers of entry, inspection, search and seizure, 10
- but such powers are subject to the restrictions in section 72 (as well as any restrictions included in the regulations).
- (4) The regulations may—
- (a) make provision enabling an enforcer to issue a notice (“a compliance notice”) requiring compliance with— 15
    - (i) data regulations;
    - (ii) a condition for authorisation or approval imposed by a decision-maker; 20

- (iii) a requirement imposed in the exercise of a power conferred by regulations under this Part;
  - (b) make provision for the enforcement of compliance notices, including provision for their enforcement as if they were orders of a court or tribunal; 5
  - (c) make provision enabling an enforcer to publish a statement to the effect that the enforcer considers that a person is not complying with data regulations or a compliance notice. 10
- (5) The regulations may make provision creating offences punishable with a fine (or a fine not exceeding an amount specified in the regulations) in respect of— 15
  - (a) the provision of false or misleading information in response to a request made in accordance with regulations under this Part; 20
  - (b) an act or omission (including falsification) which prevents an enforcer or a decision-maker from

accessing information, documents,  
equipment or other material.

- (6) The regulations may make provision enabling a financial penalty to be imposed by an enforcer in respect of— 5
- (a) the provision of false or misleading information in response to a request made in accordance with regulations under this Part;
  - (b) a failure to comply with a requirement imposed by data regulations; 10
  - (c) a failure to comply with a requirement imposed by a compliance notice;
- and see section 73 for further provision about financial penalties. 15
- (7) The regulations may make provision about the rights of persons affected by the exercise of an enforcer's functions under the regulations, including—
- (a) provision about the review of a decision made in exercise of those functions; 20

- (b) provision about appeals to a court or tribunal.
- (8) The regulations may make provision about complaints, including provision requiring an enforcer to implement procedures for the handling of complaints. 5
- (9) The regulations may make provision enabling or requiring an enforcer to publish, or to provide to a specified person, specified information relating to enforcement under the regulations, including— 10
  - (a) information about the exercise of the enforcer’s functions, either generally or in relation to a particular case, and
  - (b) information about convictions for offences. 15
- (10) The regulations may make provision for an enforcer to arrange for its powers of investigation under the regulations to be carried out by a specified person. 20
- (11) The regulations may—
  - (a) provide for functions under the regulations to be exercisable by

more than one enforcer (whether jointly or concurrently);

(b) where functions of enforcers are exercisable concurrently—

(i) provide for one of the enforcers to be the lead enforcer;

5

(ii) require the other enforcers to consult the lead enforcer before exercising the functions in a particular case;

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(iii) authorise the lead enforcer to give directions as to which enforcer is to exercise a function in a particular case.

(12) The regulations may make provision enabling or requiring an enforcer to produce and publish guidance about how it proposes to exercise its functions under the regulations (including provision enabling or requiring enforcers with functions exercisable jointly or concurrently to produce joint guidance).

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## 72 Restrictions on powers of investigation etc

- (1) Regulations under this Part may not—
- (a) authorise entry to a private dwelling without a warrant issued by a justice, or
  - (b) require a person to provide information within subsections (2) to (7) to a decision-maker or an enforcer. 5
- (2) Information is within this subsection if requiring a person to provide the information would involve an infringement of the privileges of either House of Parliament. 10
- (3) Information is within this subsection if it is information in respect of a communication which is made—
- (a) between a professional legal adviser and the adviser's client, and 15
  - (b) in connection with the giving of legal advice to the client with respect to obligations, liabilities or rights under data regulations. 20

- (4) Information is within this subsection if it is information in respect of a communication which is made—
- (a) between a professional legal adviser and the adviser's client or between such an adviser or client and another person, 5
  - (b) in connection with or in contemplation of proceedings under or arising out of data regulations, and 10
  - (c) for the purposes of such proceedings.
- (5) In subsections (3) and (4), references to the client of a professional legal adviser include references to a person acting on behalf of the client. 15
- (6) Information is within this subsection if requiring a person to provide the information would, by revealing evidence of the commission of an offence, expose the person to proceedings for that offence. 20
- (7) The reference to an offence in subsection (6) does not include an offence under—
- (a) regulations made under this Part;

- (b) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath);
  - (c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath); 5
  - (d) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statutory declarations and other false unsworn statements). 10
- (8) An oral or written statement provided by a person in response to a request for information made by a decision-maker or an enforcer in accordance with regulations under this Part may not be used in evidence against that person on a prosecution for an offence (other than an offence under regulations made under this Part) unless in the proceedings— 15
- (a) in giving evidence the person provides information inconsistent with the statement, and 20

(b) evidence relating to the statement is adduced, or a question relating to it is asked, by that person or on that person's behalf.

(9) In this section, "justice" means— 5

(a) in England and Wales, a justice of the peace,

(b) in Scotland, a sheriff or summary sheriff, and

(c) in Northern Ireland, a lay magistrate. 10

### **73 Financial penalties**

(1) This section is about provision that regulations under this Part conferring power on an enforcer to impose a financial penalty may or must (among other things) contain. 15

(2) The amount of a financial penalty must be specified in, or determined in accordance with, the regulations.

(3) The regulations must include provision—

(a) requiring an enforcer to issue 20  
guidance about how the enforcer

- proposes to exercise any discretion to determine the amount of a financial penalty and to have regard to such guidance in exercising its discretion;
- (b) requiring an enforcer, before imposing a financial penalty on a person, to give the person written notice (a “notice of intent”) of the proposed financial penalty; 5
- (c) ensuring that the person is given an opportunity to make representations about the proposed financial penalty; 10
- (d) requiring the enforcer, after the period for making representations, to decide whether to impose the financial penalty; 15
- (e) requiring the enforcer, if they decide to impose the financial penalty, to give the person notice in writing (a “final notice”) imposing the penalty;
- (f) enabling a person on whom a financial penalty is imposed to appeal to a court or tribunal in accordance with the regulations; 20

(g) as to the powers of the court or tribunal on such an appeal.

(4) The regulations may include provision—

(a) enabling a notice of intent or final notice to be withdrawn or amended; 5

(b) requiring an enforcer to withdraw a final notice in circumstances specified in the regulations;

(c) for a financial penalty to be increased by an amount specified in or determined in accordance with the regulations in the event of late payment; 10

(d) as to how financial penalties are recoverable. 15

## 74 Fees

(1) The Secretary of State or the Treasury may by regulations—

(a) make provision enabling a person listed in subsection (2), or a person acting on their behalf, to require other persons to pay fees for the purpose of meeting 20

expenses incurred, or to be incurred, in performing duties, or exercising powers, imposed or conferred by regulations under this Part, and

- (b) make provision about how amounts paid as fees must or may be used. 5
- (2) Those persons are—
- (a) data holders;
  - (b) decision-makers;
  - (c) enforcers; 10
  - (d) other persons on whom duties are imposed, or powers are conferred, by regulations under this Part.
- (3) Regulations under subsection (1)—
- (a) may only provide for a fee to be payable by persons that appear to the Secretary of State or the Treasury to be capable of being directly affected by the performance of duties, or the exercise of powers, imposed or conferred by regulations under this Part; 15 20

- (b) may provide for the amount of a fee to be an amount which is intended to exceed the cost of the things in respect of which the fee is charged.
- (4) Regulations under subsection (1) must provide for the amount of a fee to be—
- (a) a specified amount or an amount determined in accordance with the regulations, or
- (b) an amount not exceeding such an amount.
- (5) Regulations under subsection (1) specifying the amount, or maximum amount, of a fee may provide for the amount to increase at specified times and by amounts determined in accordance with the regulations.
- (6) Regulations under subsection (1) enabling a person to determine the amount of a fee must require the person to publish information about the amount and how it is determined.

- (7) Regulations under subsection (1) may (among other things) make provision about—
- (a) interest on any unpaid amounts;
  - (b) the recovery of unpaid amounts. 5

## 75 Levy

- (1) The Secretary of State or the Treasury may by regulations—
- (a) impose, or provide for a specified public body to impose, a levy on data holders for the purpose of meeting all or part of the expenses incurred, or to be incurred, during a period by decision-makers or enforcers or by persons acting on their behalf, and 10  
15
  - (b) make provision about how funds raised by means of the levy must or may be used.
- (2) Regulations under subsection (1) may only provide for a levy in respect of expenses of decision-makers or enforcers to be imposed on data holders that appear to 20

the Secretary of State or the Treasury to be capable of being directly affected by the exercise of some or all of the functions conferred on the decision-makers or enforcers by regulations under this Part. 5

(3) Regulations under subsection (1) providing for a specified public body to impose a levy must—

(a) make provision about how the rate of the levy is to be determined; 10

(b) make provision about how the period in respect of which the levy is payable is to be determined;

(c) require the body to publish information about the rate, the period and how they are determined. 15

(4) Regulations under subsection (1) may (among other things) make provision about—

(a) interest on any unpaid amounts payable by way of a levy; 20

(b) the recovery of such unpaid amounts.

## 76 Financial assistance

- (1) The Secretary of State or the Treasury may give financial assistance to a person for the purpose of meeting any expenses incurred, or to be incurred, by the person in performing duties or exercising powers under, or in connection with, regulations made under this Part. 5
- (2) But subsection (1) does not enable financial assistance to be provided to data holders, customers, authorised persons or approved persons. 10
- (3) The financial assistance may be given on such terms and conditions as the Secretary of State or the Treasury considers appropriate. 15
- (4) In this section, “financial assistance” means any kind of financial assistance whether actual or contingent, including a grant, loan, guarantee or indemnity, but does not include buying a company’s share capital. 20

## 77 Confidentiality and data protection

- (1) Except as provided by subsection (2), regulations under this Part may provide for the processing of information in accordance with the regulations not to be in breach of— 5
- (a) any obligation of confidence owed by the person processing the information, or
  - (b) any other restriction on the processing of information (however imposed). 10
- (2) Regulations under this Part are not to be read as authorising or requiring processing of personal data that would contravene the data protection legislation (but in determining whether particular processing of data would do so, take into account the power conferred or duty imposed by the provision of the regulations in question). 15

## 78 Regulations under this Part

- (1) Regulations under this Part may (among other things)— 20

- (a) make provision generally or in relation to particular cases;
- (b) make different provision for different purposes or areas;
- (c) make provision about the form and manner in which things must or may be done; 5
- (d) make provision about the content of requests, notices or other documents;
- (e) make provision about the time by which, or period within which, things must or may be done; 10
- (f) make provision by reference to specifications or technical requirements published from time to time by a specified person; 15
- (g) confer functions on a person, including functions involving the exercise of a discretion;
- (h) make consequential, supplementary, incidental, transitory, transitional or saving provision. 20

- (2) Regulations under this Part making the following types of provision may amend or repeal primary legislation—
- (a) provision about the handling of complaints; 5
  - (b) provision about the resolution of disputes;
  - (c) provision about appeals;
  - (d) provision described in subsection (1)(h). 10
- (3) The following regulations under this Part are subject to the affirmative resolution procedure—
- (a) the first regulations under each of section 66(1), (2) and (3) making provision about a particular description of customer data, 15
  - (b) the first regulations under each of section 68(1) and (2) making provision about a particular description of business data, 20

- (c) regulations under section 66 or 68 which make the requirements of regulations under this Part more onerous for data holders,
  - (d) regulations under section 70(4), 71, 74 or 75, and 5
  - (e) regulations which amend or repeal primary legislation.
- (4) Other regulations under this Part are subject to the negative resolution procedure. 10
- (5) Before making regulations described in subsection (3), the Secretary of State or the Treasury (as the case may be) must consult such of the following as the Secretary of State or the Treasury considers appropriate— 15
- (a) persons likely to be affected by the regulations;
  - (b) sectoral regulators with functions in relation to data holders likely to be affected by the regulations. 20

- (6) In this section, “primary legislation” means—
- (a) an Act of Parliament;
  - (b) an Act of the Scottish Parliament;
  - (c) a Measure or Act of Senedd Cymru; 5
  - (d) Northern Ireland legislation;
  - (e) retained direct principal EU legislation.

## **79 Duty to review regulations**

- (1) The relevant person must review data regulations for the time being in force— 10
- (a) before the end of the period of 5 years beginning with the day on which the regulations come into force, and
  - (b) at subsequent intervals not exceeding 5 years. 15
- (2) In carrying out the review, the relevant person must have regard to the matters to which the relevant person was required to have regard in deciding whether to make the regulations 20  
(see sections 66(4) and 68(3)).

- (3) The relevant person must prepare and publish a report setting out the findings of the review.
- (4) The relevant person may omit material from a report under this section before publication if the relevant person thinks the publication of that material—
- (a) would contravene the data protection legislation, or
  - (b) might harm the commercial interests of any person.
- (5) The relevant person must lay a copy of any report published under this section before Parliament.
- (6) In this section, “relevant person” means—
- (a) in the case of regulations made by the Treasury, the Treasury, and
  - (b) otherwise, the Secretary of State.

## **80 Repeal of provisions relating to supply of customer data**

Omit sections 89 to 91 of the Enterprise

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and Regulatory Reform Act 2013  
(supply of customer data).

## 81 Interpretation of this Part

In this Part—

- “application programme interface” has the meaning given by section 74(3) of the Communications Act 2003; 5
- “approved person” has the meaning given by section 69(3);
- “authorised person” has the meaning given by section 66(1)(b); 10
- “dashboard service” means an electronic communications service by means of which information may be requested by and provided to a person; 15
- “the data protection legislation” has the same meaning as in the 2018 Act (see section 3(9) of that Act);
- “decision-maker” means a person who is a decision-maker described in section 67(3)(b) or 69(3)(b); 20

- “digital content” means data which is produced and supplied in digital form;
- “electronic communications service” has the meaning given by section 32 of the Communications Act 2003; 5
- “enforcer” has the meaning given by section 71(1);
- “micro business” has the meaning given by section 33 of the Small Business, Enterprise and Employment Act 2015, read with any regulations under that section; 10
- “personal data” has the same meaning as in the 2018 Act (see section 3(2) of that Act); 15
- “processing” has the same meaning as in that Act (see section 3(4) of that Act) and related terms are to be interpreted accordingly;
- “public body” means a body or other person whose functions— 20
- (a) are of a public nature, or

(b) include functions of that nature, but in the latter case, the body or person is a public body to the extent only of those functions;

“small business” has the meaning given by section 33 of the Small Business, Enterprise and Employment Act 2015, read with any regulations under that section;

5

“specified” means specified, or of a description specified, by regulations under this Part;

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“third party recipient” has the meaning given by section 68(1)(b).

## Part 4

15

### OTHER PROVISION ABOUT DIGITAL INFORMATION

#### *Privacy and electronic communications*

## 82 The PEC Regulations

In sections 83 to 92, “the PEC Regulations” means the Privacy and

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Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426).

### **83 Storing information in the terminal equipment of a subscriber or user**

- (1) The PEC Regulations are amended as follows. 5
- (2) In regulation 6 (storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user)— 10
- (a) for paragraphs (1) and (2) substitute—
- “(1) Subject to paragraphs (2) to (2D) and (4), a person must not store information, or gain access to information stored, in the terminal equipment of a subscriber or user. 15
- (2) Paragraph (1) does not prevent a person storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user if the subscriber or user— 20

- (a) is provided with clear and comprehensive information about the purpose of the storage or access, and
  - (b) gives consent to the storage or access. 5
- (2A) Paragraph (1) does not prevent a person storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user if— 10
  - (a) the person provides an information society service,
  - (b) the sole purpose of the storage or access is to enable the person— 15
    - (i) to collect information for statistical purposes about how the service is used with a view to making improvements to the service, or 20

- (ii) to collect information for statistical purposes about how a website by means of which the service is provided is used with a view to making improvements to the website, 5
- (c) any information that the storage or access enables the person to collect is not shared with any other person except for the purpose of enabling that other person to assist with making improvements to the service or website, 15
- (d) the subscriber or user is provided with clear and comprehensive information about the purpose of the storage or access, and 20
- (e) the subscriber or user is given a simple means of objecting

(free of charge) to the storage or access and does not object.

- (2B) Paragraph (1) does not prevent a person storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user if—
- (a) the person provides an information society service by means of a website, 5 10
  - (b) the sole purpose of the storage or access is—
    - (i) to enable the way the website appears or functions when displayed on, or accessed by, the terminal equipment to adapt to the preferences of the subscriber or user, or 15 20
    - (ii) to otherwise enable an enhancement of the appearance or

functionality of the website when displayed on, or accessed by, the terminal equipment,

- (c) the subscriber or user is provided with clear and comprehensive information about the purpose of the storage or access, and 5
- (d) the subscriber or user is given a simple means of objecting (free of charge) to the storage or access and does not object. 10
- (2C) Paragraph (1) does not prevent a person storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user if— 15

  - (a) the sole purpose of the storage or access is to enable software installed in the terminal equipment to be updated, 20

- (b) the update is necessary to ensure the security of the terminal equipment,
  - (c) the update will not result in an alteration of a setting affecting the privacy of information stored in the terminal equipment, 5
  - (d) the subscriber or user is provided with clear and comprehensive information about the purpose of the update, and 10
  - (e) after the storage or access, the subscriber or user has an opportunity to postpone the update before it takes effect. 15
- (2D) Paragraph (1) does not prevent a person storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user if— 20

- (a) the person receives a communication from the terminal equipment,
  - (b) the communication is a request from the subscriber or user for emergency assistance or otherwise indicates that the subscriber or user is in need of emergency assistance, and 5
  - (c) the sole purpose of the storage or access is to enable the geographical position of the subscriber or user to be ascertained with a view to the emergency assistance being provided.”, 10 15
- (b) in paragraph (3)—
- (i) after “Where” insert “on more than one occasion”, and
  - (ii) for the words from “on more than one occasion, it is” to the end substitute “for the same purpose— 20

- (a) it is sufficient for the purposes of paragraph (2) that the requirements of that paragraph are met in respect of the initial use, 5
  - (b) it is sufficient for the purposes of paragraph (2A) that the requirements of subparagraphs (d) and (e) of that paragraph are met in respect of the initial use, and 10
  - (c) it is sufficient for the purposes of paragraph (2B) that the requirements of subparagraphs (c) and (d) of that paragraph are met in respect of the initial use.”, 15
- (c) in paragraph (3A)—
- (i) for “paragraph (2)” substitute “paragraphs (2)(b), (2A)(e) and (2B)(d)”, 20
  - (ii) after “consent”, in both places, insert “or an objection”, and

(iii) after “subscriber”, in both places, insert “or user”, and

(d) after paragraph (4) insert—

- “(5) For the purposes of paragraph (4)(b), the technical storage of, or access to, information is strictly necessary for the provision of an information society service requested by the subscriber or user if, for example, the storage or access is strictly necessary—
- (a) to protect information provided in connection with, or relating to, the provision of the service requested, 5
  - (b) to ensure that the security of the terminal equipment of the subscriber or user is not adversely affected by the provision of the service requested, 10 15
  - (c) to prevent or detect fraud in connection with the provision of the service requested, 20

- (d) to prevent or detect technical faults in connection with the provision of the service requested, or
  - (e) to enable either of the following things to be done where necessary for the provision of the service requested—
    - (i) automatically authenticating the identity of the subscriber or user, or
    - (ii) maintaining a record of selections made on a website, or information put into a website, by the subscriber or user.
- (6) In this regulation—
- (a) a reference to a person storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user

- includes a reference to the person instigating the storage or access, and
- (b) a reference, except in paragraph (2A), to gaining access to information stored in the terminal equipment of a subscriber or user includes a reference to collecting or monitoring information automatically emitted by the terminal equipment. 5 10
- (7) In this regulation, “website” includes a mobile application and any other platform by means of which an information society service is provided.” 15
- (3) After regulation 6 insert—
- “6A Power to provide exceptions to regulation 6(1)”** 20
- (1) The Secretary of State may by regulations made by statutory instrument—

- (a) amend these regulations—
  - (i) by adding an exception to the prohibition in regulation 6(1), or
  - (ii) by omitting or varying an exception to that prohibition, and 5
- (b) make consequential, supplementary, incidental, transitional, transitory or saving provision, including provision amending these regulations. 10
- (2) Regulations under paragraph (1) may make different provision for different purposes. 15
- (3) Before making regulations under paragraph (1), the Secretary of State must consult—
  - (a) the Information Commissioner, and 20
  - (b) such other persons as the Secretary of State considers appropriate.

- (4) A statutory instrument containing regulations under paragraph (1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 5

**6B Information technology to enable consent to be given, or an objection to be made, automatically**

- (1) The Secretary of State may by regulations made by statutory instrument provide that a person of a specified description may supply, provide or otherwise make available information technology of a specified description only if the technology meets specified requirements. 10 15
- (2) The power conferred by paragraph (1) is to be exercised only for the purpose of securing that information technology supplied, provided or otherwise made available enables users of the technology to ensure that any consent they wish to 20

- give, or any objection they wish to make, to an operator of a website for the purposes of regulation 6 is given or made automatically upon their visiting the website. 5
- (3) Regulations under paragraph (1) may make provision conferring functions on the Information Commissioner relating to the enforcement of the regulations. 10
- (4) The provision made by reason of paragraph (3) may include provision applying (with or without modification) provisions of the Data Protection Act 2018 relating to enforcement. 15
- (5) Regulations under paragraph (1) may—
- (a) make different provision for different purposes, and
  - (b) make consequential, supplementary, incidental, transitional, transitory or saving provision. 20

- (6) Before making regulations under paragraph (1), the Secretary of State must consult—
- (a) the Information Commissioner,
  - (b) the Competition and Markets Authority, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (7) A statutory instrument containing regulations under paragraph (1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (8) In this regulation—
- “information technology” includes—
- (a) computers,
  - (b) other devices whose uses include the processing of information by electronic means (“IT devices”),

- (c) parts, accessories and other equipment made or adapted for use in connection with computers or IT devices,
  - (d) software and code made or adapted for use in connection with computers or IT devices, and 5
  - (e) networks and other infrastructure (whether physical or virtual) used in connection with other information technology; 10
- “specified” means specified in regulations made under paragraph (1); 15
- “website” includes a mobile application and any other platform by means of which an information society service is provided (and a reference to “an operator” of a website or “visiting” a website is to be read accordingly).” 20

## 84 Unreceived communications

- (1) Regulation 2 of the PEC Regulations is amended as follows.
- (2) In paragraph (1)—
  - (a) in the definition of “call”, at the end insert “, and a reference to making a call includes a reference to attempting to establish such a connection”, and 5
  - (b) in the definition of “communication”—
    - (i) for “exchanged or conveyed between” substitute “transmitted to”, and 10
    - (ii) for “conveyed”, in the second place it occurs, substitute “transmitted”. 15
- (3) After paragraph (1) insert—
  - “(1A) In the application of these Regulations in relation to—
    - (a) information that is sent but not received, 20

(b) a communication that is transmitted but not received,

(c) an electronic mail that is sent but not received, or

(d) an unsuccessful attempt to make a call,

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a reference to the recipient of the information, communication, electronic mail or call is to be read as a reference to the intended recipient.”

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## 85 Meaning of “direct marketing”

In regulation 2(1) of the PEC Regulations (interpretation), at the appropriate place, insert—

““direct marketing” means the communication (by whatever means) of advertising or marketing material which is directed to particular individuals;”.

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## 86 Use of electronic mail for direct marketing purposes

- (1) Regulation 22 of the PEC Regulations (use of electronic mail for direct marketing purposes) is amended as follows. 5
- (2) In paragraph (2), after “paragraph (3)” insert “or (3A)”. 5
- (3) After paragraph (3) insert—
  - “(3A) A person may send or instigate the sending of electronic mail for the purposes of direct marketing where— 10
    - (a) the direct marketing is solely for the purpose of furthering a charitable, political or other non-commercial objective of that person; 15
    - (b) that person obtained the contact details of the recipient of the electronic mail in the course of the recipient expressing an interest in or offering or providing support for 20

the furtherance of that objective or a similar objective; and

- (c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of their contact details for the purposes of such direct marketing, at the time that the details were initially collected, and, where the recipient did not initially refuse the use of the details, at the time of each subsequent communication.”

## **87 Direct marketing for the purposes of democratic engagement**

- (1) The Secretary of State may by regulations provide an exception from a direct marketing provision for a case where communications activity—
- (a) is carried out for the purposes of democratic engagement, and

- (b) is not directed to individuals under the age of 14.
- (2) For the purposes of subsection (1)
- (a), communications activity is carried out for the purposes of democratic engagement if— 5
- (a) the activity is carried out—
- (i) by, or at the instigation of, an elected representative, and
- (ii) for the purposes of the elected representative’s democratic engagement activities, 10
- (b) the activity is carried out—
- (i) by, or at the instigation of, a person or organisation included in a register maintained under section 23 of the Political Parties, Elections and Referendums Act 2000, and 15
- (ii) for the purposes of the person’s or organisation’s democratic engagement activities, for the purposes of assisting an 20

- elected representative with their democratic engagement activities or for the purposes of assisting with a candidate's campaign for election as an elected representative, 5
- (c) the activity is carried out—
- (i) by, or at the instigation of, a candidate for election as an elected representative, and 10
- (ii) for the purposes of the candidate's campaign for election,
- (d) the activity is carried out—
- (i) by, or at the instigation of, a permitted participant in relation to a referendum, and 15
- (ii) for the purposes of the permitted participant's campaigning in connection with the referendum, or
- (e) the activity is carried out— 20
- (i) by, or at the instigation of, an accredited campaigner in relation to a recall petition, and

- (ii) for the purposes of the accredited campaigner's campaigning in connection with the recall petition.
- (3) Regulations under this section may provide for an exception to be subject to conditions or limitations. 5
- (4) Regulations under this section may—
  - (a) make consequential, supplementary, incidental, transitional, transitory or saving provision, and 10
  - (b) make different provision for different purposes.
- (5) Before making regulations under this section, the Secretary of State must consult— 15
  - (a) the Information Commissioner, and
  - (b) such other persons as the Secretary of State considers appropriate.
- (6) Before making regulations under this section, the Secretary of State must consider the effect the regulations may have on the privacy of individuals. 20

- (7) Regulations under this section are subject to the affirmative resolution procedure.

## 88 Meaning of expressions in section 87

- (1) In section 87—

“accredited campaigner” has the meaning given in Part 5 of Schedule 3 to the Recall of MPs Act 2015; 5

“candidate”, in relation to election as an elected representative, has the meaning given by the provision listed in the relevant entry in the second column of the table in subsection (3); 10

“communications activity” means—

(a) transmitting, or instigating the transmission of, a communication, or 15

(b) using, or instigating the use of, a public electronic communications service to make a call;

“democratic engagement activities” means activities whose purpose is to support or promote democratic engagement; 20

- “direct marketing” means the communication (by whatever means) of advertising or marketing material which is directed to particular individuals;
- “direct marketing provision” means any provision of regulations 19 to 24 of the PEC Regulations; 5
- “elected representative” means a person listed in the first column of the table in subsection (3) and see also subsections (4) and (5); 10
- “permitted participant” has the same meaning as in Part 7 of the Political Parties, Elections and Referendums Act 2000 (referendums) (see section 105 of that Act); 15
- “recall petition” has the same meaning as in the Recall of MPs Act 2015 (see section 1(2) of that Act);
- “referendum” means a referendum or other poll held on one or more questions specified in, or in accordance with, an enactment. 20

(2) In the definition of “communications activity” in subsection (1), “call”, “communication” and “public electronic communications service” have the same meaning as in the PEC Regulations (see regulation 2). 5

(3) This is the table referred to in the definitions of “candidate” and “elected representative” in subsection (1)— 10

<i>Elected representative</i>	<i>Candidate for election as an elected representative</i>	
a member of the House of Commons	section 118A of the Representation of the People Act 1983	
a member of the Senedd	article 84(2) of the National Assembly for Wales (Representation of the People) Order 2007 (S.I. 2007/236)	15
a member of the Scottish Parliament	article 80(1) of the Scottish Parliament (Elections etc) Order 2015 (S.S.I. 2015/425)	20

<i>Elected representative</i>	<i>Candidate for election as an elected representative</i>	
a member of the Northern Ireland Assembly	section 118A of the Representation of the People Act 1983, as applied by the Northern Ireland Assembly (Elections) Order 2001 (S.I. 2001/2599)	5
an elected member of a local authority within the meaning of section 270(1) of the Local Government Act 1972, namely—(i) in England, a county council, a district council, a London borough council or a parish council;	section 118A of the Representation of the People Act 1983	10
(ii) in Wales, a county council, a county borough council or a community council;		15
		20

<i>Elected representative</i>	<i>Candidate for election as an elected representative</i>	
an elected mayor of a local authority within the meaning of Part 1A or 2 of the Local Government Act 2000	section 118A of the Representation of the People Act 1983, as applied by the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 (S.I. 2007/1024)	5
a mayor for the area of a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009	section 118A of the Representation of the People Act 1983, as applied by the Combined Authorities (Mayoral Elections) Order 2017 (S.I. 2017/67)	10
the Mayor of London or an elected member of the London Assembly	section 118A of the Representation of the People Act 1983	20
an elected member of the Common Council of the City of London	section 118A of the Representation of the People Act 1983	20
an elected member of the Council of the Isles of Scilly	section 118A of the Representation of the People Act 1983	25

<i>Elected representative</i>	<i>Candidate for election as an elected representative</i>	
an elected member of a council constituted under section 2 of the Local Government etc (Scotland) Act 1994	section 118A of the Representation of the People Act 1983	5
an elected member of a district council within the meaning of the Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.))	section 130(3A) of the Electoral Law Act (Northern Ireland) 1962 (c. 9 (N.I.))	10
a police and crime commissioner	article 3 of the Police and Crime Commissioner Elections Order 2012 (S.I. 2012/1917)	15

(4) For the purposes of the definition of “elected representative” in subsection (1), a person who is —

- (a) a member of the House of Commons immediately before Parliament is dissolved,
- 20

(b) a member of the Senedd immediately before Senedd Cymru is dissolved,

(c) a member of the Scottish Parliament immediately before that Parliament is dissolved, or

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(d) a member of the Northern Ireland Assembly immediately before that Assembly is dissolved,

is to be treated as if the person were such a member until the end of the period of 30 days beginning with the day after the day on which the subsequent general election in relation to that Parliament or Assembly is held.

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(5) For the purposes of the definition of “elected representative” in subsection (1), a person who is an elected member of the Common Council of the City of London and whose term of office comes to an end at the end of the day preceding the annual Wardmotes is to be treated as if the person were such a member until the end of the fourth day after the day on which those Wardmotes are held.

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## **89 Duty to notify the Commissioner of unlawful direct marketing**

(1) The PEC Regulations are amended as follows.

(2) After regulation 26 insert—

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### **“26A Duty to notify Commissioner of unlawful direct marketing**

(1) A provider of a public electronic communications service must notify the Commissioner of any reasonable grounds the provider has for suspecting that a person is contravening or has contravened any of the direct marketing regulations in the course of using the service.

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(2) A provider of a public electronic communications network must notify the Commissioner of any reasonable grounds the provider has for suspecting that a person is contravening or has contravened any of the direct marketing regulations in the course of using

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the network or using a public electronic communication service provided by means of the network.

- (3) A notification under this regulation must be given within the period of 28 days beginning with the day on which the reasonable grounds for suspicion come to the attention of the provider. 5
- (4) “Direct marketing regulations” means regulations 19 to 22. 10
- 26B Fixed penalty for failure to comply with regulation 26A**
- (1) If a provider of a public electronic communications service or public electronic communications network fails to comply with regulation 26A, the Commissioner may issue a fixed monetary penalty notice in respect of the failure. 15
- (2) The amount of a fixed monetary penalty under this regulation shall be £1,000. 20
- (3) Before serving a fixed monetary

penalty notice, the Commissioner must serve the provider with a notice of intent.

- (4) The notice of intent must—
- (a) state the name and address of the provider; 5
  - (b) state the nature of the failure;
  - (c) state the amount of the fixed monetary penalty;
  - (d) include a statement informing the provider of the opportunity to discharge liability for the fixed monetary penalty; 10
  - (e) indicate the date on which the Commissioner proposes to serve the fixed monetary penalty notice; and 15
  - (f) inform the provider that the provider may make written representations in relation to the proposal to serve a fixed monetary penalty notice 20

within the period of 21 days beginning with the day the notice of intent is served.

- (5) A provider may discharge liability for the fixed monetary penalty if the provider pays to the Commissioner the amount of £800 within the period of 21 days beginning with the day the notice of intent is served. 5
- (6) The Commissioner may not serve a fixed monetary penalty notice until the period within which representations may be made has expired. 10
- (7) The fixed monetary penalty notice must state— 15
- (a) the name and address of the provider;
  - (b) details of the notice of intent served on the provider;
  - (c) whether there have been any written representations; 20

- (d) details of any early payment discounts;
  - (e) the grounds on which the Commissioner imposes the fixed monetary penalty; 5
  - (f) the date by which the fixed monetary penalty is to be paid; and
  - (g) details of, including the time limit for, the provider's right of appeal against the imposition of the fixed monetary penalty. 10
- (8) A provider on whom a fixed monetary penalty notice is served may appeal to the Tribunal against the issue of the fixed monetary penalty notice. 15
- (9) Any sum received by the Commissioner by virtue of this regulation must be paid into the Consolidated Fund. 20
- (10) In England and Wales, the fixed monetary penalty is recoverable—

- (a) if the county court so orders,  
as if it were payable under  
an order of that court;
  - (b) if the High Court so orders,  
as if it were payable under  
an order of that court. 5
- (11) In Scotland, the fixed monetary  
penalty may be enforced in the same  
manner as an extract registered  
decree arbitral bearing a warrant  
for execution issued by the sheriff  
court of any sheriffdom in Scotland. 10
- (12) In Northern Ireland, the fixed  
monetary penalty is recoverable—
  - (a) if a county court so orders,  
as if it were payable under  
an order of that court; 15
  - (b) if the High Court so orders,  
as if it were payable under  
an order of that court. 20
- (13) The Secretary of State may by  
regulations made by statutory  
instrument amend this regulation so

as to substitute a different amount for the amount for the time being specified in paragraph (2) or (5).

- (14) Regulations under paragraph (13) may make transitional provision. 5
- (15) Before making regulations under paragraph (13), the Secretary of State must consult—
- (a) the Commissioner, and
  - (b) such other persons as the Secretary of State considers appropriate. 10
- (16) A statutory instrument containing regulations under this regulation may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 15
- 26C**      **Guidance in relation to regulation**
- 26A**      20
- (1) The Commissioner must produce and publish guidance about what

may constitute reasonable grounds for suspecting that a person is contravening or has contravened any of the direct marketing regulations in the course of using a public electronic communications service or public electronic communications network. 5

(2) The Commissioner may—

(a) alter and replace guidance produced under this regulation, and 10

(b) must publish any altered or replacement guidance.

(3) Before producing guidance under this regulation (including any altered or replacement guidance), the Commissioner must consult— 15

(a) the Secretary of State,

(b) OFCOM,

(c) providers of public electronic communications networks, 20

- (d) providers of public electronic communications services, and
    - (e) such other persons as the Commissioner considers appropriate. 5
- (4) The Commissioner must have regard to guidance under this regulation in determining whether to issue a fixed monetary penalty notice under regulation 26B. 10
- (5) “Direct marketing regulations” means regulations 19 to 22.”
- (3) In regulation 5C (personal data breach: fixed monetary penalty)—
  - (a) in paragraph (10)— 15
    - (i) omit “and Northern Ireland”, and
    - (ii) in paragraph (a), for “a county court” substitute “the county court”, and
  - (b) after paragraph (11) insert— 20
- “(12) In Northern Ireland, the penalty is recoverable—

- (a) if a county court so orders, as if it were payable under an order of that court;
- (b) if the High Court so orders, as if it were payable under an order of that court.”

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(4) After regulation 18 insert—

**“18A Direct marketing**

- (1) Regulations 19 to 26C make provision about direct marketing.
- (2) See also section 87 of the Data Protection and Digital Information Act 2023 (which provides for regulations to make exceptions to regulations 19 to 24).”

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**90 Commissioner’s enforcement powers**

- (1) The PEC Regulations are amended in accordance with subsections (2) to (8).
- (2) In regulation 5 (security of public electronic communications services), omit paragraph (6).

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- (3) Omit regulation 5B (personal data breach: audit).
- (4) In regulation 5C (personal data breach: fixed monetary penalty) after paragraph (12) (inserted by section 89 of this Act) insert— 5
- “(13) The Secretary of State may by regulations made by statutory instrument amend this regulation so as to substitute a different amount for the amount for the time being specified in paragraph (2) or (5). 10
- (14) Regulations under paragraph (13) may make transitional provision.
- (15) Before making regulations under paragraph (13), the Secretary of State must consult— 15
- (a) the Information Commissioner, and
- (b) such other persons as the Secretary of State considers appropriate. 20
- (16) A statutory instrument containing

regulations under this regulation may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

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(5) For regulation 31 substitute—

**“31 Information Commissioner’s enforcement powers**

(1) Schedule 1 provides for certain provisions of Parts 5 to 7 of the Data Protection Act 2018 to apply with modifications for the purposes of enforcing these Regulations.

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(2) In regulations 32 and 33, “enforcement functions” means the functions of the Information Commissioner under those provisions, as applied by that Schedule.”

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(6) Omit regulation 31A (third party information notices).

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(7) Omit regulation 31B (appeals against third party information notices).

- (8) For Schedule 1 substitute the Schedule set out in Schedule 10.
- (9) In paragraph 58(1) of Schedule 20 to the 2018 Act (transitional provision relating to the PEC Regulations) for “regulations 2, 31 and 31B of, and Schedule 1 to,” substitute “regulation 2 of”. 5

## 91 Codes of conduct

- (1) The PEC Regulations are amended as follows. 10
- (2) After regulation 32 insert—

### “32A Codes of conduct

- (1) The Commissioner must encourage representative bodies to produce codes of conduct intended to contribute to compliance with these Regulations. 15
- (2) Under paragraph (1), the Commissioner must encourage representative bodies to produce codes which take account of, 20

among other things, the specific features of different sectors.

- (3) A code of conduct described in paragraph (1) may, for example, make provision with regard to— 5
- (a) rights and obligations under these Regulations;
  - (b) out-of-court proceedings and other dispute resolution procedures for resolving disputes arising in connection with these Regulations. 10
- (4) The Commissioner must encourage representative bodies to submit codes of conduct described in paragraph (1) to the Commissioner in draft. 15
- (5) Where a representative body does so, the Commissioner must—
- (a) provide the representative body with an opinion on whether the code correctly reflects the requirements of these Regulations, 20

- (b) decide whether to approve the code, and
    - (c) if the code is approved, register and publish the code.
- (6) The Commissioner may only approve a code if, among other things—
  - (a) the code contains a mechanism for monitoring whether persons who undertake to apply the code comply with its provisions, and
  - (b) in relation to persons other than public bodies, the mechanism involves monitoring by a body which is accredited for that purpose by the Commissioner under regulation 32B.
- (7) In relation to amendments of a code of conduct that is for the time being approved under this regulation—
  - (a) paragraphs (4) and (5) apply as they apply in relation to a code, and

- (b) the requirements in paragraph (6) must be satisfied by the code as amended.
- (8) A code of conduct described in paragraph (1) may be contained in the same document as a code of conduct described in Article 40 of the UK GDPR (and a provision contained in such a document may be a provision of both codes). 5 10
- (9) In this regulation—
- “public body” has the meaning given in section 7 of the Data Protection Act 2018 (for the purposes of the UK GDPR); 15
- “representative body” means an association or other body representing categories of—
- (a) communications providers, or
- (b) other persons engaged in activities regulated by these Regulations; 20

“the UK GDPR” has the meaning given in section 3(10) of the Data Protection Act 2018.

- 32B Accreditation of bodies monitoring compliance with codes of conduct** **5**
- (1) The Commissioner may, in accordance with this regulation, accredit a body for the purpose of monitoring whether persons other than public bodies comply with a code of conduct described in regulation 32A(1). 10
- (2) The Commissioner may accredit a body only where the Commissioner is satisfied that the body has— 15
- (a) demonstrated its independence,
  - (b) demonstrated that it has an appropriate level of expertise in relation to the subject matter of the code, 20
  - (c) established procedures which allow it—

- (i) to assess a person's eligibility to apply the code,
    - (ii) to monitor compliance with the code, and 5
    - (iii) to review the operation of the code periodically,
  - (d) established procedures and structures to handle complaints about infringements of the code or about the manner in which the code has been, or is being, implemented by a person, 10
  - (e) made arrangements to publish information about the procedures and structures described in sub-paragraph (d), and 15
  - (f) demonstrated that it does not have a conflict of interest. 20
- (3) The Commissioner must prepare and publish guidance about how the Commissioner proposes to

- take decisions about accreditation under this regulation.
- (4) A body accredited under this regulation in relation to a code must take appropriate action where a person infringes the code. 5
- (5) If the action taken by a body under paragraph (4) consists of suspending or excluding a person from the code, the body must inform the Commissioner, giving reasons for taking that action. 10
- (6) The Commissioner must revoke the accreditation of a body under this regulation if the Commissioner considers that the body— 15
- (a) no longer meets the requirements for accreditation, or
- (b) has failed, or is failing, to comply with paragraph (4) or (5). 20
- (7) In this regulation, “public

body” has the same meaning as in regulation 32A.

### **32C Effect of codes of conduct**

Adherence to a code of conduct approved under regulation 32A may be used by a person as a means of demonstrating compliance with these Regulations.” 5

- (3) In regulation 33 (technical advice to the Commissioner)— 10
- (a) omit “, in connection with his enforcement functions,” and
- (b) at the end insert “where the request is made in connection with—
- (a) the Commissioner’s enforcement functions, or 15
- (b) the Commissioner’s functions under regulation 32A or 32B (codes of conduct).”
- (4) In Schedule 1 (Information Commissioner’s enforcement powers) (inserted by Schedule 10 to this Act), in paragraph 18(b)(ii) 20

(maximum amount of penalty), for “or 24” substitute “, 24 or 32B(4) or (5)”.

## **92 Pre-commencement consultation**

- (1) A requirement to consult under section 87 may be satisfied by consultation before, as well as by consultation after, that section comes into force. 5
- (2) A requirement to consult under a provision inserted into the PEC Regulations by any of sections 83 to 90 may be satisfied by consultation before, as well as by consultation after, the provision inserting that provision comes into force. 10

### *Trust services*

## **93 The eIDAS Regulation** 15

In sections 94 to 97, “the eIDAS Regulation” means Regulation (EU) No. 910/2014 of the European Parliament and the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market. 20

## **94 Recognition of EU conformity assessment bodies**

In Chapter 3 of the eIDAS Regulation (trust services), after Article 24A insert—

### **Recognition of EU conformity assessment bodies** 5

**For the purposes of Articles 20(1), 21 and 24(1) (d), a body is to be treated as if it were a conformity assessment body in relation to a description of trust services provider (and trust service) if it is a conformity assessment body in relation to that description of provider (and service) for the purposes of the equivalent EU law.”<sup>95</sup>**

**Removal of recognition of EU standards etc** 15

- (1) The Secretary of State may by regulations—
- (a) amend Article 24A of the eIDAS Regulation (recognition of EU standards etc for qualified trust services) so as to remove circumstances in which something
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- is to be treated as qualified under that Regulation for the purposes of a provision or measure specified in paragraph 1 of that Article;
- (b) revoke that Article; 5
- (c) revoke Article 24B of the eIDAS Regulation (recognition of EU conformity assessment bodies);
- (d) revoke Article 51 of the eIDAS Regulation (transitional measures for electronic signatures); 10
- (e) amend a provision listed in subsection (3) so as to remove a reference to a trust service provider established in the EU; 15
- (f) amend a provision listed in subsection (4) so as to remove a reference to European standards or provisions of equivalent EU law.
- (2) The power under subsection (1)(a) includes power to amend or remove an assumption in Article 24A(2) of the eIDAS Regulation. 20

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- (3) The provisions mentioned in subsection (1)(e) are—
- (a) Article 13(1) of the eIDAS Regulation;
  - (b) Articles 2(1)(a) and 4(1)(a) of the Implementing Decision. 5
- (4) The provisions mentioned in subsection (1)(f) are—
- (a) Article 24(2)(b) of the eIDAS Regulation;
  - (b) Articles 2(2)(c)(7) and 4(2)(c)(7) of the Implementing Decision. 10
- (5) Regulations under this section may—
- (a) include transitional provision or savings, and
  - (b) make different provision for different purposes, including for the purposes of different provisions of the eIDAS Regulation. 15
- (6) A statutory instrument containing regulations under this section is subject to the negative resolution procedure. 20

- (7) In this section, “the Implementing Decision” means Commission Implementing Decision (EU) 2015/1506 laying down specifications relating to formats of advance electronic signatures and advance seals to be recognised by public sector bodies pursuant to Articles 27(5) and 37(5) of the eIDAS Regulation.

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## **96 Recognition of overseas trust products**

- (1) The eIDAS Regulation is amended as follows.

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- (2) In Chapter 3 of the eIDAS Regulation, after Article 45 insert—

**“Section 9 Recognition of overseas trust services Legal effects of overseas electronic signatures etc**

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- Article 45A — 1. The Secretary of State may by regulations provide that, for the purposes of Articles 25(2), 35(2), 41(2) and 43(2), an overseas trust product of a specified description is to be treated as qualified.

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2. In this Article—

“overseas”, in relation to a trust product, means provided by a person established in a country or territory outside the United Kingdom;

“specified” means specified 5

by regulations under this Article; “trust product” means an electronic signature, an electronic seal, an electronic time stamp or an electronic registered

delivery service. 3. The Secretary of 10

State may not make regulations under this Article specifying a description of overseas trust product unless satisfied

that the reliability of such a product is at least equivalent to the reliability of a 15

comparable trust product that is qualified.

4. When making regulations under this Article in relation to a description of overseas trust product, the Secretary

of State must have regard to (among 20

other things) the law in the other country or territory relevant to that description of product and related trust services.

## Overseas signatures and seals in public service

The Secretary of State may by regulations provide that an overseas electronic signature of a specified description is to be treated—for the purposes of Article 27(1), as an advanced electronic signature that complies with the Implementing Decision; for the purposes of Article 27(2), as an advanced electronic signature based on a qualified certificate for electronic signature, or a qualified signature, that complies with the Implementing Decision.<sup>2</sup>

The Secretary of State may by regulations provide that an overseas electronic seal of a specified description is to be treated—

for the purposes of Article 37(1), as an advanced electronic seal that complies with the Implementing Decision; for the purposes of Article 37(2), as an advanced electronic seal based on a qualified certificate for electronic seal, or a qualified seal, that complies with the Implementing Decision.<sup>3</sup> In this Article—

- “the Implementing Decision” means Commission Implementing Decision (EU) 2015/1506 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies; “overseas”, in relation to an electronic signature or electronic seal, means provided by a person established in a country or territory outside the United Kingdom; “specified” means specified by regulations made under this Article.4. The Secretary of State may not make regulations under point (a) or (b) of paragraph 1 or point (a) or (b) of paragraph 2 specifying a description of overseas electronic signature or overseas electronic seal unless satisfied that the reliability of such a signature or seal is at least equivalent to the reliability of a signature or seal described in that point.
5. When making regulations under this Article in relation to a description of overseas electronic signature or overseas electronic seal, the Secretary of State must have regard to (among other things)
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the law in the other country or territory relevant to that description of signature or seal and related trust services.

### **Regulations under this Section**

- Article 45C — 1. Before making regulations under Article 45A or 45B, the Secretary of State must consult the supervisory body. 5
2. Regulations under Article 45A or 45B— 10
- may describe something by (among other things) describing something that meets a condition specified in the regulations or is provided by a person who meets such a condition, and may include a condition referring to (among other things) the law of the other country or territory or a standard or other document, including the law, standard or other document as amended from time to time. 15
3. Regulations under Article 45A or 45B may— 20
- make different provision for different purposes, including for the purposes of different provisions of this Regulation,

and include transitional or transitory provision or savings.<sup>4</sup> Regulations under Article 45A or 45B are to be made by statutory instrument.

5. A statutory instrument containing regulations under Article 45A or 45B is subject to annulment in pursuance of either House of Parliament.” 5

(3) In Article 3(21) (definition of “product”), at the end insert “(except in the expression “trust product”)”. 10

## **97 Co-operation between supervisory authority and overseas authorities**

(1) Article 18 of the eIDAS Regulation (co-operation with EU authorities) is amended as follows. 15

(2) In the heading, for “EU” substitute “overseas”.

(3) In paragraph 1, for “public authority in the EU” substitute “designated overseas authority”. 20

(4) In paragraph 2, for “other than in accordance with the data protection legislation” substitute “if the processing would contravene the data protection legislation (but in determining whether processing would do so, take into account the power conferred by that paragraph)”.

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(5) After paragraph 2 insert—

*In this Article—“designated” means designated by regulations made by the Secretary of State that are in force;“overseas authority” means a person, or description of person, with functions relating to the regulation or supervision of trust services outside the United Kingdom. Before making regulations under this Article, the Secretary of State must consult the supervisory body. Regulations under this Article may include transitional or transitory provision or savings. Regulations under this Article are to be made by statutory instrument. A statutory instrument containing regulations under this Article is subject to annulment in pursuance of either House of Parliament.”Sharing of information*

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## **98 Disclosure of information to improve public service delivery to undertakings**

- (1) Section 35 of the Digital Economy Act 2017 (disclosure of information to improve public service delivery) is amended as follows. 20
- (2) In subsection (9)—

- (a) in paragraph (a), for “or households” substitute “, households or undertakings”, and
- (b) in paragraph (b), for “or households” substitute “, households or undertakings”. 5
- (3) In subsection (10)—
- (a) the words after “its purpose” become paragraph (a), and
- (b) at the end of that paragraph, insert “, or 10
- (b) the assisting of undertakings in connection with any trade, business or charitable purpose.”
- (4) After subsection (12) insert—
- “(13) In this section “undertaking” means— 15
- (a) any person, other than a public authority, carrying on a trade or business, whether or not with a view to profit, or
- (b) any body, or the trustees 20  
of a trust, established for charitable purposes only.

- (14) In this section, in so far as it forms the law in Scotland and Northern Ireland, “charitable purpose” has the same meaning as it has in the law of England and Wales (see section 2 of the Charities Act 2011).” 5

## **99 Implementation of law enforcement information-sharing agreements**

- (1) The appropriate national authority may by regulations make such provision as the authority considers appropriate for the purpose of, or in connection with, implementing an international agreement so far as relating to the sharing of information for law enforcement purposes, as it has effect from time to time. 10 15
- (2) Regulations under this section may—
- (a) make different provision for different purposes, and
  - (b) make transitional, transitory or saving provision. 20

- (3) Subject to subsections (4) and (5), regulations under this section may provide that sharing of information in accordance with the regulations does not breach any restriction on the sharing of information (however imposed). 5
- (4) Regulations under this section do not require or authorise processing of personal data that would contravene the data protection legislation (but in determining whether processing of personal data would do so, take into account a duty imposed, or power conferred, by the regulations). 10
- (5) Regulations under this section do not require or authorise the making of a disclosure which is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016. 15
- (6) Regulations under this section are subject to the negative resolution procedure 20
- (7) In this section—  
“appropriate national authority” has the meaning given in section 100;

“the data protection legislation” has the same meaning as in the 2018 Act (see section 3(9) of that Act);

“law enforcement purposes” means the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against, and the prevention of, threats to public security;

“personal data” has the same meaning as in the 2018 Act (see section 3(2) of that Act);

“processing” has the same meaning as in the 2018 Act (see section 3(4) of that Act).

## **100 Meaning of “appropriate national authority”**

(1) In section 99, “appropriate national authority” means the Secretary of State, subject as follows.

(2) The Scottish Ministers are also an appropriate national authority in relation

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- to regulations under section 99 which contain only provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament. 5
- (3) The Welsh Ministers are also an appropriate national authority in relation to regulations under section 99 which contain only provision which would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown). 10
- (4) The consent of a Minister of the Crown is required before any provision is made by the Welsh Ministers in regulations under section 99 so far as that provision, if contained in an Act of Senedd Cymru, would require the consent of a Minister of the Crown. 15 20
- (5) In Schedule 7B to the Government of Wales Act 2006 (general restrictions on legislative competence of Senedd Cymru), in paragraph 11(6)(b)

(exceptions to restrictions relating to Ministers of the Crown)—

(a) omit the “or” at the end of sub-paragraph (viii), and

(b) after sub-paragraph (ix) insert “; or 5

(x) section 99 of the Data Protection and Digital Information Act 2023.”

(6) In this section, “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975. 10

### *Registers of births and deaths*

## **101 Form in which registers of births and deaths are to be kept**

(1) The Births and Deaths Registration Act 1953 is amended as follows. 15

(2) For section 25 (provision of registers, etc, by Registrar General) substitute—

**“25 Form in which registers are to be kept, etc 20**

(1) Registers of live-births, still-births

and deaths must be kept in such form as the Registrar General may reasonably require.

- (2) The Registrar General may, in particular, require any such register to be kept in a form that secures that any information entered in the register by a registrar—
- (a) in the case of a register of live-births or of deaths, is available to the superintendent registrar and to the Registrar General immediately after the entry has been made, and
- (b) in the case of a register of still-births, is available to the Registrar General immediately after the entry has been made.
- (3) In a case where a register is kept in such form as is mentioned in subsection (2), any information in the register which is available to the superintendent registrar or Registrar General is to be regarded

as held by that person (as well as by the registrar) in connection with that person's functions.

- (4) The Registrar General—
- (a) may provide anything which the Registrar General considers appropriate for the registers mentioned in subsection (1) to be kept in the form required under that subsection, and
  - (b) must maintain anything provided under paragraph (a).
- (5) The Registrar General must also provide the forms required for the purposes of this Act for making certified copies of entries in registers.”
- (3) Omit the following provisions—
- (a) section 26 (quarterly returns to be made by registrar to superintendent registrar);

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- (b) section 27 (quarterly returns by superintendent registrar to Registrar General);
- (c) section 28 (custody of registers, etc).

## **102 Provision of equipment and facilities by local authorities** 5

In the Registration Service Act 1953, after section 11 insert—

- “11A Provision of equipment and facilities by local authorities** 10
- (1) At each register office provided for the superintendent registrar of a district, the council which employs the superintendent registrar shall, subject to the provisions of the local scheme, provide and maintain such equipment or facilities as the Registrar General reasonably considers to be necessary for the performance of the superintendent registrar’s functions. 15
  - (2) At each office and each station for a sub-district of a registrar, the council 20

which employs the registrar shall, subject to the provisions of the local scheme, provide and maintain such equipment or facilities as the Registrar General reasonably considers to be necessary for the performance of the registrar's functions.”

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### **103 Requirements to sign register**

(1) The Births and Deaths Registration Act 1953 is amended as follows.

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(2) After section 38A insert—

#### **“38B Requirements to sign register**

(1) Where any register of births or register of deaths is required to be kept under this Act otherwise than in hard copy form, the Minister may by regulations provide that—

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(a) a person's duty under this Act to sign the register at any time is to have effect as a duty to comply with specified requirements at that time, and

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- (b) a person who complies with those requirements is to be treated for the purposes of this Act as having signed the register at that time and, in the case of a duty to sign the register in the presence of the registrar, to have done so in the presence of the registrar, and accordingly, in such a case, the entry in the register is to be taken for the purposes of this Act to have been signed by the person. 5 10
- (2) The provision that may be made by regulations under this section includes, among other things— 15
- (a) provision requiring a person to sign something other than the register;
- (b) provision requiring a person to provide specified evidence of identity in such form and manner as may be specified. 20

- (3) In this section “specified” means specified in regulations under this section.”
- (3) In section 39A (regulations made by the Minister: further provisions), after subsection (5) insert— 5
- “(6) A statutory instrument that contains (whether alone or with other provision) regulations made by the Minister under section 38B may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.” 10
- 104 Treatment of existing registers and records 15**
- (1) The repeal of section 28 of the Births and Deaths Registration Act 1953 by section 101 above does not affect—
- (a) the requirement under section 28(2) of that Act for every superintendent registrar (“S”) to keep with the records of S’s office any registers of 20

live-births or of deaths which are in S's custody immediately before the coming into force of that repeal, or

- (b) the requirement under section 28(4) of that Act for the Registrar General to keep in the General Register Office—
- (i) any certified copies or information sent or provided under section 27 of that Act (quarterly returns by superintendent registrar to Registrar General), or
  - (ii) any registers of still-births that were forwarded to the Registrar General before the coming into force of that repeal.
- (2) Any register of live-births or of deaths which, immediately before the coming into force of this section, is in the custody of a registrar and is unfilled is, as soon as is reasonably practicable after the coming into force of this section, to be delivered to the superintendent registrar (“S”) to be kept by S with the records of S's office.

- (3) Any register of still-births which, immediately before the coming into force of this section, is in the custody of a registrar and is unfilled is, as soon as is reasonably practicable after the coming into force of this section, to be forwarded to the Registrar General to be kept in the General Register Office in such order and manner as the Registrar General thinks fit. 5
- (4) The Registrar General may dispose of— 10
- (a) any certified copies held by the Registrar General of entries in any register of still-births forwarded to the Registrar General under section 28(3) of the Births and Deaths Registration Act 1953 or subsection (3) above, or 15
- (b) any information contained in those entries which is held by the Registrar General in electronic form by virtue of section 27 of that Act. 20
- (5) Where, at any time during the period mentioned in subsection (6), a copy has been kept otherwise than in hard copy form of any register of births or register

of deaths kept for a sub-district under the Births and Deaths Registration Act 1953—

- (a) that copy is to be treated, on and after the day on which section 94 comes into force, as the register kept for the sub-district for the purposes of that Act, 5
- (b) on and after that day, the register is to be treated for the purposes of section 25(3) of that Act as having been kept in the form in which the copy was kept, 10
- (c) where before that day a person signed any entry in the register, the entry is to continue, on and after that day, to be regarded for the purposes of that Act as having been signed by the person, and 15
- (d) the Registrar General may dispose of—
  - (i) any certified copies held by the Registrar General of entries in the register, or
  - (ii) any information contained in those entries which is held by the Registrar General in 20

electronic form by virtue of section 27 of that Act.

- (6) The period referred to in subsection (5) is the period—
- (a) beginning with 1 July 2009, and 5
  - (b) ending immediately before the day on which section 101 comes into force.
- (7) Expressions used in this section and in the Births and Deaths Registration Act 1953 have the same meaning in this section as in that Act. 10

## **105 Minor and consequential amendments**

Schedule 11 contains minor and consequential amendments.

*Information standards for health and social care* 15

## **106 Information standards for health and adult social care in England**

Schedule 12 makes provision about information standards for health and adult social care in England (under Part 20

9 of the Health and Social Care Act 2012) and information technology.

## Part 5

### REGULATION AND OVERSIGHT

#### *Information Commission*

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#### **107 The Information Commission**

- (1) The 2018 Act is amended in accordance with subsections (2) to (4).
- (2) After section 114 insert—

#### *“The Information Commission*

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#### **114A The Information Commission**

- (1) A body corporate called the Information Commission is established.
- (2) Schedule 12A makes further provision about the Commission.”
- (3) In section 3 (terms relating to the processing of personal data), after subsection (8) insert—

“(8A) “The Commission” means the Information Commission (see section 114A).”

- (4) In section 206 (index of defined expressions), in the Table, at the appropriate place insert— 5

“the Commission section 3”.

- (5) Schedule 13 to this Act—
- (a) inserts Schedule 12A to the 2018 Act, and 10
- (b) makes transitional provision relating to the person who holds the office of Information Commissioner immediately before the day on which Schedule 13 comes into force. 15

## **108 Abolition of the office of Information Commissioner**

- (1) The office of Information Commissioner is abolished.
- (2) Accordingly, the 2018 Act is amended as follows. 20

- (3) In section 3 (terms relating to the processing of personal data) omit subsection (8).
- (4) Omit section 114 (the Information Commissioner) and the italic heading before that section. 5
- (5) In section 206 (index of defined expressions), in the Table, omit the entry for the Commissioner.
- (6) In section 214(1) (extent)— 10
- (a) omit “and” at the end of paragraph (a), and
- (b) omit paragraph (b).
- (7) Omit Schedule 12 (the Information Commissioner). 15

## **109 Transfer of functions to the Information Commission**

- (1) The functions of the Information Commissioner are transferred to the Information Commission. 20

- (2) So far as is appropriate in consequence of subsection (1), a reference to the Information Commissioner (however expressed) in an enactment or other document (whenever passed or made) is to be treated as a reference to the Information Commission. 5
- (3) In this section, “enactment” includes—
- (a) this Act,
  - (b) an enactment comprised in subordinate legislation (as defined in section 21 of the Interpretation Act 1978), 10
  - (c) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru, 15
  - (d) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament,
  - (e) an enactment comprised in, or in an instrument made under, Northern Ireland legislation, and 20
  - (f) retained direct EU legislation.

## 110 Transfer of property etc to the Information Commission

- (1) The Secretary of State may make a scheme for the transfer of property, rights and liabilities from the Information Commissioner to the Information Commission. 5
- (2) The things that may be transferred under a transfer scheme include—
  - (a) property, rights and liabilities that could not otherwise be transferred; 10
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme.
- (3) A transfer scheme may— 15
  - (a) make provision about the continuing effect of things done by the Information Commissioner in respect of anything transferred;
  - (b) make provision about the continuation of things (including legal proceedings) in the process of being done by, 20

- on behalf of or in relation to the Information Commissioner in respect of anything transferred;
- (c) make provision for references to the Information Commissioner in an instrument or other document in respect of anything transferred under a transfer scheme to be treated as references to the Information Commission; 5 10
- (d) make provision which is the same as or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246);
- (e) make other consequential, supplementary, incidental or transitional provision. 15
- (4) A transfer scheme may provide—
- (a) for modifications by agreement;
- (b) for modifications to have effect from the date when the original scheme came into effect. 20

- (5) In this section, references to rights and liabilities include rights and liabilities relating to a contract of employment.

*Oversight of biometric data*

**111 Oversight of retention and use of biometric material** 5

- (1) The office of Commissioner for the Retention and Use of Biometric Material is abolished.
- (2) Part 1 of the Protection of Freedoms Act 2012 (regulation of biometric data) is amended in accordance with subsections (3) to (6). 10
- (3) For the heading before section 20 substitute “Functions of the Investigatory Powers Commissioner”. 15
- (4) In section 20 (appointment and functions of the Commissioner for the Retention and Use of Biometric Material)—
- (a) in the heading, omit “Appointment and”, 20
- (b) omit subsection (1),

- (c) after that subsection insert—
- “(1A) In this section, “the Commissioner” means the Investigatory Powers Commissioner (as defined in section 263(1) of the Investigatory Powers Act 2016).”,
- (d) omit subsections (6) to (8),
- (e) in subsection (9)—
- (i) after “63G” insert “of the Police and Criminal Evidence Act 1984”, and
- (ii) at the end insert “(“the section 63D functions””,
- (f) omit subsections (10) and (11), and
- (g) at the end insert—
- “(12) Section 229(6) and (7) of the Investigatory Powers Act 2016 (duty not to act contrary to public interest etc) apply to the exercise of functions under this section and the section 63D functions as they apply to the exercise of functions under that Act.

- (13) Errors identified by the Commissioner in carrying out functions under this section or the section 63D functions are not relevant errors for the purposes of section 231 of the Investigatory Powers Act 2016 (error reporting). 5
- (14) The Commissioner’s annual report under section 234 of the Investigatory Powers Act 2016 must include information about the carrying out of the Commissioner’s functions under this section and the section 63D functions.” 10
- (5) Omit section 21 (reports by Commissioner). 15
- (6) In section 22 (guidance on making national security determinations)—
- (a) in subsection (4)—
- (i) for “the guidance, or revising guidance already given” substitute “guidance or revised guidance under this section”, and 20

- (ii) for “Commissioner for the Retention and Use of Biometric Material” substitute “Investigatory Powers Commissioner”,
- (b) in subsection (5)— 5
  - (i) after “giving guidance” insert “or revised guidance”,
  - (ii) omit “or revising guidance already given,”
  - (iii) in paragraph (a), for “revisions” 10 substitute “revised guidance”, and
  - (iv) in paragraph (b), for “revisions to the guidance” substitute “revised guidance”,
- (c) in subsection (6), for “make the revisions to the guidance” 15 substitute “revised guidance”,
- (d) in subsection (7), for “revisions to guidance, come” substitute “revised guidance, comes”, 20
- (e) in subsection (9), for “given or revised” substitute “or revised guidance given”, and

- (f) at the end insert—
- “(10) In this section, “the Investigatory Powers Commissioner” has the meaning given in section 263(1) of the Investigatory Powers Act 2016.” 5
- (7) Part 5 of the Police and Criminal Evidence Act 1984 (questioning and treatment of persons by police) is amended in accordance with subsections (8) to (10).
- (8) In section 63AB (National DNA Database Strategy Board)— 10
- (a) in subsection (4), for “Commissioner for the Retention and Use of Biometric Material” substitute “Investigatory Powers Commissioner”, 15
- (b) in subsection (5), for “Commissioner for the Retention and Use of Biometric Material” substitute “Investigatory Powers Commissioner”, and
- (c) in subsection (13) (inserted by section 106 of this Act), at the appropriate place insert— 20

““the Investigatory Powers Commissioner” has the meaning given in section 263(1) of the Investigatory Powers Act 2016;”.

- (9) In section 63F(5)(c) (retention of section 63D material: persons arrested for or charged with a qualifying offence), for “Commissioner for the Retention and Use of Biometric Material” substitute “Investigatory Powers Commissioner”. 5 10
- (10) In section 63G (retention of section 63D material by virtue of section 63F(5): consent of Commissioner)—
- (a) in subsection (1), for “Commissioner for the Retention and Use of Biometric Material” substitute “Investigatory Powers Commissioner (“the Commissioner”)”, and 15
- (b) in subsection (10), after “section—” insert— 20

““the Investigatory Powers Commissioner” has the meaning

given in section 263(1) of the Investigatory Powers Act 2016,”.

(11) In consequence of the amendments made by this section—

- (a) in Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices), omit “Commissioner for the Retention and Use of Biometric Material”, 5
- (b) in Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), omit “Commissioner for the Retention and Use of Biometric Material”, and 10
- (c) in the Scottish Biometrics Commissioner Act 2020 (asp 8)— 15
- (i) in section 2(2) (functions), for “Commissioner for the Retention and Use of Biometric Material” substitute “Investigatory Powers Commissioner”, and 20

(ii) in section 3 (power to work with others), omit paragraph (i) and after that paragraph insert—

“(ia) the Investigatory Powers Commissioner (as defined in section 263(1) of the Investigatory Powers Act 2016),”.

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## **112 Removal of provision for regulation of CCTV etc**

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(1) The office of Surveillance Camera Commissioner is abolished.

(2) In the Protection of Freedoms Act 2012, omit Chapter 1 of Part 2 (regulation of CCTV and other surveillance technology).

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(3) In consequence of that repeal—

(a) in Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices), omit “Surveillance Camera Commissioner”;

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(b) in Part 6 of Schedule 1 to the Freedom of Information Act 2000

(public authorities), omit “The Surveillance Camera Commissioner”.

### 113 Oversight of biometrics databases

- (1) Section 63AB of the Police and Criminal Evidence Act 1984 (National DNA Database Strategy Board) is amended as follows. 5
- (2) For the heading substitute “Oversight of biometrics databases”.
- (3) In subsection (1)—
  - (a) for “National DNA Database Strategy Board” substitute “Strategy Board (“the Board”)”, 10
  - (b) after “of” insert “—
    - (a)”, and
  - (c) at the end insert “, and 15
    - (b) a database of fingerprints—
      - (i) taken from a person under a power conferred by this Part of this Act, or
      - (ii) taken by the police, with 20 the consent of the person

from whom they were taken, in connection with the investigation of an offence by the police.”

- (4) After that subsection insert— 5
- “(1A) The Board is to be known as the Forensic Information Database Strategy Board.”
- (5) In subsection (2)—
- (a) omit “National DNA Database Strategy”, 10
- (b) for “guidance about” substitute “one or more codes of practice about—
- (a) the erasure of personal data from a database listed in subsection (1), 15
- (b) ”
- (c) at the end insert “, and
- (c) the destruction of other material from which biometric data contained in a database listed in subsection (1) is derived.” 20

- (6) In subsection (3), for “guidance” substitute “a code of practice”.
- (7) In subsection (4), omit “National DNA Database Strategy”.
- (8) In subsection (5), omit “National DNA Database Strategy”. 5
- (9) In subsection (6), omit “National DNA Database Strategy”.
- (10) In subsection (7), omit “National DNA Database Strategy”. 10
- (11) At the end insert—
- “(10) The Secretary of State may by regulations made by statutory instrument—
- (a) change the databases 15  
which the Board is required to oversee by—
- (i) adding a database operated for policing purposes which consists 20  
entirely or mainly of biometric data, or

- (ii) removing a database;
  - (b) rename the Board;
  - (c) require or authorise the Board to issue a code of practice or guidance. 5
- (11) Regulations under subsection (10) may—
- (a) amend this section;
  - (b) make different provision for different purposes; 10
  - (c) make consequential, transitional, transitory or saving provision.
- (12) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 15
- (13) In this section— 20
- “biometric data” means personal data resulting from specific

technical processing relating to the physical, physiological or behavioural characteristics of an individual, which allows or confirms the unique identification of that individual, such as facial images or dactyloscopic data;

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“personal data” has the same meaning as in the Data Protection Act 2018 (see section 3(2) of that Act).”

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## Part 6

### FINAL PROVISIONS

#### **114 Power to make consequential amendments**

- (1) The Secretary of State may by regulations make provision that is consequential on any provision made by this Act. 15
- (2) Regulations under this section—
- (a) may make different provision for different purposes; 20

- (b) may include transitional, transitory or saving provision;
  - (c) may amend, repeal or revoke any provision made by primary legislation.
- (3) The reference in subsection (2)(c) to provision made by primary legislation is—
  - (a) where the amendment, repeal or revocation is consequential on section 107, 108 or 109(1) or Schedule 13, a reference to provision made by primary legislation whenever passed or made (including this Act), and
  - (b) in any other case, a reference to provision made by primary legislation passed or made before the end of the Session in which this Act is passed.
- (4) Regulations under this section that amend, repeal or revoke primary legislation are subject to the affirmative resolution procedure.
- (5) Any other regulations under this section are subject to the negative resolution procedure.

- (6) In this section, “primary legislation” means—
- (a) an Act of Parliament;
  - (b) an Act of the Scottish Parliament;
  - (c) a Measure or Act of Senedd Cymru; 5
  - (d) Northern Ireland legislation;
  - (e) retained direct principal EU legislation.

## 115 Regulations

- (1) Regulations under this Act made by the Secretary of State, the Treasury or the Welsh Ministers are to be made by statutory instrument. 10
- (2) For regulations under this Act made by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (Scottish statutory instruments). 15
- (3) Where regulations under this Act made by the Secretary of State or the Treasury are subject to “the affirmative resolution procedure” the regulations may not be 20

made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.

- (4) Where regulations under this Act are subject to “the negative resolution procedure”— 5
- (a) if made by the Secretary of State or the Treasury, the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament; 10
- (b) if made by the Scottish Ministers, the regulations are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)); 15
- (c) if made by the Welsh Ministers, the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of Senedd Cymru. 20

- (5) Any provision that may be included in regulations under this Act made by the Secretary of State or the Treasury subject to the negative resolution procedure may be made by regulations subject to the affirmative resolution procedure. 5

## 116 Interpretation

In this Act—

“the 2018 Act” means the Data Protection Act 2018 (see section 1); 10

“the UK GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. 15

## 117 Financial provision

There is to be paid out of money provided by Parliament—

- (a) any expenditure incurred under or by virtue of this Act by the 20

- Secretary of State, the Treasury or a government department, and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided. 5

## 118 Extent

- (1) This Act extends to England and Wales, Scotland and Northern Ireland, subject to subsections (2) to (4).
- (2) The following provisions extend to England and Wales only— 10
- (a) sections 101 to 104 (registers of births and deaths);
- (b) section 106 and Schedule 12 (information standards for health and adult social care). 15
- (3) Paragraph 23 of Schedule 12A to the 2018 Act, inserted by Schedule 13 to this Act, extends to England and Wales and Northern Ireland only. 20
- (4) Subject to subsection (3), an amendment, repeal or revocation made by this Act

has the same extent as the enactment amended, repealed or revoked.

## 119 Commencement

- (1) Except as provided by subsections (2) and (3), this Act comes into force on such day as the Secretary of State may by regulations appoint. 5
- (2) The following provisions come into force on the day on which this Act is passed—
  - (a) section 64 (report on the operation of Part 2); 10
  - (b) section 79 (review of regulations under Part 3);
  - (c) this Part;
  - (d) any other provision of this Act so far as it confers power to make regulations or is otherwise necessary for enabling the exercise of such a power on or after the day on which this Act is passed. 15
- (3) The following provisions come into force at the end of the period of 20

two months beginning with the day on which this Act is passed—

- (a) section 4 (consent to law enforcement processing);
  - (b) section 14 (representatives of controllers or processors not established in the UK); 5
  - (c) section 17 (logging of law enforcement processing);
  - (d) section 36 (power of Commissioner to require documents); 10
  - (e) section 113 (oversight of biometrics databases).
- (4) Regulations under this section may make different provision for different purposes. 15

## **120 Transitional provision**

- (1) The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act. 20

- (2) Regulations under this section may amend Schedule 21 to the 2018 Act or Part 2 of Schedule 7 to this Act by adding, varying or repealing provision.
- (3) Regulations under this section containing provision described in subsection (2) are subject to the negative resolution procedure. 5
- (4) Regulations under this section may make different provision for different purposes. 10

## **121 Short title**

This Act may be cited as the Data Protection and Digital Information Act 2023.

## SCHEDULES

## SCHEDULE 1 Section 5

LAWFULNESS OF PROCESSING: RECOGNISED  
LEGITIMATE INTERESTS

**In the UK GDPR, at the end insert—**

**LAWFULNESS OF PROCESSING:  
RECOGNISED LEGITIMATE  
INTERESTS** 5

**Disclosure for purposes of processing  
described in Article 6(1)(e)**

**This condition is met where—the** 10  
**processing is necessary for the  
purposes of making a disclosure  
of personal data to another person  
in response to a request from  
the other person, andthe request** 15  
**states that the other person needs  
the personal data for the purposes  
of carrying out processing  
described in Article 6(1)(e) that**  
**has a legal basis that satisfies** 20  
**Article 6(3).National security, public  
security and defence**

**This condition is met where the processing**

**is necessary—for the purposes of safeguarding national security, for the purposes of protecting public security, or for defence purposes. Emergencies**

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- 3. This condition is met where the processing is necessary for the purposes of responding to an emergency.
4. In paragraph 3, “emergency” has the same meaning as in Part 2 of the Civil Contingencies Act 2004.

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## **Crime**

**This condition is met where the processing is necessary for the purposes of—detecting, investigating or preventing crime, or apprehending or prosecuting offenders. Safeguarding vulnerable individuals**

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- 6. This condition is met where the processing is necessary for the purposes of safeguarding a vulnerable individual.
7. In paragraph 6—

20

“safeguarding”, in relation to a vulnerable individual, means—protecting a vulnerable individual from neglect or physical, mental or emotional harm, or protecting the physical, mental or emotional well-being of a vulnerable individual; “vulnerable individual” means an individual—aged under 18, or aged 18 or over and at risk.<sup>8</sup>

For the purposes of paragraph 7—

- protection of an individual, or of the well-being of an individual, includes both protection relating to a particular individual and protection relating to a type of individual, and an individual aged 18 or over is “at risk” if the controller has reasonable cause to suspect that the individual—
- (i) has needs for care and support,
  - (ii) is experiencing, or at risk of, neglect or

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physical, mental or  
emotional harm, and

- (iii) as a result of those needs  
is unable to protect  
themselves against the  
neglect, harm or risk.

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### **Democratic engagement**

This condition is met where—the processing  
is carried out for the purposes of  
democratic engagement, and the data  
subject is aged 14 or over.<sup>10</sup> For the  
purposes of paragraph 9, processing  
is carried out for the purposes of  
democratic engagement if—

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the processing—(i) is  
carried out by an elected  
representative or a person  
acting with the authority of  
such a representative, and

15

- (ii) is necessary for the  
purposes of discharging  
the elected representative's  
functions or for the

20

- purposes of the elected representative's democratic engagement activities,
- the processing—(i) is
- carried out by a person or organisation included in a register maintained under section 23 of the Political Parties, Elections and Referendums Act 2000, and
- (ii) is necessary for the purposes of the person's or organisation's democratic engagement activities,
- for the purposes of assisting an elected representative with their functions or democratic engagement activities
- or for the purposes of assisting with a candidate's campaign for election as an elected representative,

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- the processing—(i) is carried out by a candidate for election as an elected representative or a person acting with the authority of such a candidate, and 5
- (ii) is necessary for the purposes of the candidate’s campaign for election,
- the processing—(i) is carried out by a permitted participant in relation to a referendum or a person acting with the authority of such a person, and 10 15
- (ii) is necessary for the purposes of the permitted participant’s campaigning in connection with the referendum, or 20
- the processing(i) is carried out by an accredited campaigner in relation to a recall petition or a person

acting with the authority  
of such a person, and

- (ii) is necessary for the  
purposes of the accredited  
campaigner’s campaigning  
in connection with  
the recall petition.

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11. In paragraph 10—

“accredited campaigner” has the meaning given  
in Part 5 of Schedule 3 to the Recall of  
MPs Act 2015; “candidate”, in relation to  
election as an elected representative, has  
the meaning given by the provision listed  
in the relevant entry in the second column  
of the table in paragraph 12; “democratic  
engagement activities” means activities  
whose purpose is to support or promote  
democratic engagement; “elected  
representative” means a person listed in  
the first column of the table in paragraph  
12 and see also paragraphs 13 and  
14; “permitted participant” has the same  
meaning as in Part 7 of the Political  
Parties, Elections and Referendums Act

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2000 (referendums) (see section 105 of that Act); “recall petition” has the same meaning as in the Recall of MPs Act 2015 (see section 1(2) of that Act); “referendum” means a referendum or other poll held on one or more questions specified in, or in accordance with, an enactment.<sup>12</sup> This is the table referred to in paragraph 11—

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*Elected representative*

*Candidate for election as an elected representative*

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a member of the House of Commons

section 118A of the Representation of the People Act 1983

a member of the Senedd

article 84(2) of the National Assembly for Wales (Representation of the People) Order 2007 (S.I. 2007/236)

15

a member of the Scottish Parliament

article 80(1) of the Scottish Parliament (Elections etc) Order 2015 (S.S.I. 2015/425)

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<i>Elected representative</i>	<i>Candidate for election as an elected representative</i>	
a member of the Northern Ireland Assembly	section 118A of the Representation of the People Act 1983, as applied by the Northern Ireland Assembly (Elections) Order 2001 (S.I. 2001/2599)	5
an elected member of a local authority within the meaning of section 270(1) of the Local Government Act 1972, namely—(i) in England, a county council, a district council, a London borough council or a parish council;	section 118A of the Representation of the People Act 1983	10
(ii) in Wales, a county council, a county borough council or a community council;		15
		20

<i>Elected representative</i>	<i>Candidate for election as an elected representative</i>	
an elected mayor of a local authority within the meaning of Part 1A or 2 of the Local Government Act 2000	section 118A of the Representation of the People Act 1983, as applied by the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 (S.I. 2007/1024)	5
a mayor for the area of a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009	section 118A of the Representation of the People Act 1983, as applied by the Combined Authorities (Mayoral Elections) Order 2017 (S.I. 2017/67)	10
the Mayor of London or an elected member of the London Assembly	section 118A of the Representation of the People Act 1983	20
an elected member of the Common Council of the City of London	section 118A of the Representation of the People Act 1983	20
an elected member of the Council of the Isles of Scilly	section 118A of the Representation of the People Act 1983	25

<i>Elected representative</i>	<i>Candidate for election as an elected representative</i>	
an elected member of a council constituted under section 2 of the Local Government etc (Scotland) Act 1994	section 118A of the Representation of the People Act 1983	5
an elected member of a district council within the meaning of the Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.))	section 130(3A) of the Electoral Law Act (Northern Ireland) 1962 (c. 9 (N.I.))	10
a police and crime commissioner	article 3 of the Police and Crime Commissioner Elections Order 2012 (S.I. 2012/1917)	15

13. For the purposes of the definition of “elected representative” in paragraph 11, a person who is—

a member of the House of Commons immediately before Parliament is dissolved, a member of the Senedd immediately before Senedd Cymru is dissolved, a member of the Scottish

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Parliament immediately before that  
Parliament is dissolved, or a member of the  
Northern Ireland Assembly immediately  
before that Assembly is dissolved, is to  
be treated as if the person were such a 5  
member until the end of the period of 30  
days beginning with the day after the day  
on which the subsequent general election  
in relation to that Parliament or Assembly  
is held.14. For the purposes of the 10  
definition of “elected representative” in  
paragraph 11, a person who is an elected  
member of the Common Council of the City  
of London and whose term of office comes  
to an end at the end of the day preceding 15  
the annual Wardmotes is to be treated as  
if the person were such a member until  
the end of the fourth day after the day  
on which those Wardmotes are held.”

## SCHEDULE 2      Section 6

**PURPOSE LIMITATION: PROCESSING TO BE TREATED  
AS COMPATIBLE WITH ORIGINAL PURPOSE**

**In the UK GDPR, after Annex 1 (inserted  
by Schedule 1 to this Act)      5**  
**insert—PURPOSE LIMITATION:  
PROCESSING TO BE TREATED  
AS COMPATIBLE WITH ORIGINAL  
PURPOSE**

**Disclosure for purposes of processing      10**  
**described in Article 6(1)(e)**

This condition is met where—  
the processing—(i) is  
necessary for the purposes  
of making a disclosure of      15  
personal data to another  
person in response  
to a request from the  
other person, and  
(ii) is not carried out by      20  
a public authority  
in the performance  
of its tasks, and

the request states that the other person needs the personal data for the purposes of carrying out processing that—(i) is described in Article 6(1)(e),  
(ii) has a legal basis that satisfies Article 6(3), and  
(iii) is necessary to safeguard an objective listed in Article 23(1)(c) to (j).

### **Public security**

— 2. This condition is met where the processing is necessary for the purposes of protecting public security.

### **Emergencies**

— 3. This condition is met where the processing is necessary for the purposes of responding to an emergency.

4. In paragraph 3, “emergency has the same meaning as in Part 2 of the Civil Contingencies Act 2004.

## Crime

**This condition is met where the processing is necessary for the purposes of—detecting, investigating or preventing crime, or apprehending or prosecuting offenders. Protection of vital interests of data subjects and others**

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- 6. This condition is met where the processing is necessary for the purposes of protecting the vital interests of the data subject or another individual.

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## Safeguarding vulnerable individuals

- 7. This condition is met where the processing is necessary for the purposes of safeguarding a vulnerable individual.

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8. In paragraph 7—

“safeguarding”, in relation to vulnerable individual, means —protecting a vulnerable individual from neglect or physical, mental or emotional harm, or protecting the physical, mental or emotional well-being of a vulnerable individual; “vulnerable

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individual” means an individual—aged under 18, or aged 18 or over and at risk.<sup>9</sup>

For the purposes of paragraph 8—

- protection of an individual,  
or of the well-being of an individual, includes both protection relating to a particular individual and protection relating to a type of individual, and an individual aged 18 or over is “at risk” if the controller has reasonable cause to suspect that the individual—(i) has needs for care and support,  
(ii) is experiencing, or at risk of, neglect or physical, mental or emotional harm, and  
(iii) as a result of those needs is unable to protect themselves against the neglect, harm or risk.

## Taxation

- 10. This condition is met where the processing is carried out for the purposes of the assessment or collection of a tax or duty or an imposition of a similar nature. 5

## Legal obligations

- 11. This condition is met where the processing is necessary for the purposes of complying with an obligation of the controller under an enactment, a rule of law or an order of a court or tribunal.” 10

### SCHEDULE 3 Section 12

#### AUTOMATED DECISION-MAKING: CONSEQUENTIAL AMENDMENTS

#### *The UK GDPR* 15

- 1 The UK GDPR is amended as follows.
- 2 (1) Article 12 (transparent information, communication and modalities for the exercise of the rights of the data subject) is amended as follows. 20

- (2) In paragraph 1, for “under Articles 15 to 22” substitute “made under or by virtue of Articles 15 to 22D”.
- (3) In paragraph 2—
- (a) for “under Articles 15 to 22”, in the first place, substitute “arising under or by virtue of Articles 15 to 22D”, and 5
- (b) for “his or her rights under Articles 15 to 22” substitute “those rights”. 10
- (4) In paragraph 3, for “under Articles 15 to 22” substitute “made under or by virtue of Articles 15 to 22D”.
- (5) In paragraph 5, for “under Articles 15 to 22” substitute “under or by virtue of Articles 15 to 22D”. 15
- 3 In Article 12A(1) (vexatious or excessive requests) (inserted by section 7 of this Act), for “from a data subject under any of Articles 15 to 22” substitute “made by a data subject under or by virtue of any of Articles 15 to 22D”. 20

- 4 In Article 13(2)(f) (information about automated decision-making to be provided where personal data is collected from the data subject), for “referred to in Article 22(1) and (4)” substitute “which is subject to the requirement to provide safeguards under Article 22C”. 5
- 5 In Article 14(2)(g) (information about automated decision-making to be provided where personal data is not obtained from the data subject), for “referred to in Article 22(1) and (4)” substitute “which is subject to the requirement to provide safeguards under Article 22C”. 10 15
- 6 In Article 15(1)(h) (right of access by the data subject), for “referred to in Article 22(1) and (4)” substitute “which is subject to the requirement to provide safeguards under Article 22C”. 20
- 7 In the heading of Section 4 of Chapter 3, omit “and automated decision-making”.

- 8 In Article 23(1) (restrictions), for “provided for in Articles 12 to 22”, in both places, substitute “arising under or by virtue of Articles 12 to 22D”.
- 9 In Article 47(2)(e) (binding corporate rules), for the words from “the right not” to “Article 22” substitute “the right to protection in accordance with, and with regulations made under, Articles 22A to 22D in connection with decisions based solely on automated processing (including decisions reached by means of profiling)”. 5 10
- 10 In Article 83(5) (general conditions for imposing administrative fines)— 15
- (a) in point (b), for “22” substitute “21”, and
- (b) after that point insert—
- “(ba) Article 22B or 22C (restrictions on, and safeguards for, automated decision-making);”. 20

*The 2018 Act*

- 11 The 2018 Act is amended as follows.
- 12 Omit section 14 (automated decision-making authorised by law: safeguards).
- 13 In section 43(1)(d) (overview and scope of provisions in Part 3 about rights of the data subject), for “sections 49 and 50” substitute “sections 50A to 50D”. 5
- 14 (1) Section 52 (form of provision of information etc) is amended as follows. 10
- (2) In subsection (3), for “by the data subject under section 45, 46, 47 or 50” substitute “made by the data subject under or by virtue of any of sections 45, 46, 47, 50C or 50D”. 15
- (3) In subsection (6), for “under sections 45 to 50” substitute “arising under or by virtue of sections 45 to 50D”.
- 15 (1) Section 53 (manifestly unfounded or excessive requests by the data subject) is amended as follows. 20

- (2) In subsection (A1) (inserted by section 7 of this Act), “for “from a data subject under section 45, 46, 47 or 50” substitute “made by a data subject under or by virtue of any of sections 45, 46, 47, 50C or 50D”. 5
- (3) In subsection (3), for “under section 45, 46, 47 or 50” substitute “described in subsection (A1)”. 5
- 16 In section 149(2)(b) 10  
(enforcement notices)—
- (a) after “provision of” insert  
“or made under”, and
- (b) for “22” substitute “22D”. 10
- 17 In section 157(2)(a) (maximum amount of penalty), for “49,” substitute “50B, 50C,”. 15

## SCHEDULE 4      Section 22

OBLIGATIONS OF CONTROLLERS AND PROCESSORS:  
CONSEQUENTIAL AMENDMENTS*The UK GDPR*

- |   |   |    |
|---|---|----|
| 1 | The UK GDPR is amended as follows.  | 5  |
| 2 | In Article 4(1) (definitions),<br>after point (11) insert—  |    |
|   | “(11A) “senior responsible individual” means<br>an individual designated as the senior<br>responsible individual of a controller<br>or processor under Article 27A;”.                                   | 10 |
| 3 | In Article 13(1)(b) (information to<br>be provided where personal data is<br>collected from the data subject), for<br>“data protection officer” substitute<br>“senior responsible individual”.          | 15 |
| 4 | In Article 14(1)(b) (information to be<br>provided where personal data has not<br>been obtained from the data subject),<br>for “data protection officer” substitute<br>“senior responsible individual”. | 20 |

- 5 In the heading of Section 1 of Chapter 4 (general obligations), at the end insert “of the controller”.
- 6 In Article 33(3)(b) (notification of a personal data breach to the Commissioner), for “data protection officer” substitute “senior responsible individual”. 5
- 7 In Article 47(2)(h) (binding corporate rules), for “data protection officer designated in accordance with Article 37” substitute “senior responsible individual”. 10
- 8 In Article 49(6) (derogations for specific authorities: documenting assessment), for “30” substitute “30A”. 15
- 9 In Article 57(3) (performance of Information Commissioner’s tasks generally to be free of charge for data subject), for “data protection officer” substitute “senior responsible individual”. 20
- 10 (1) Article 83 (general conditions for imposing an administrative fine) is amended as follows.

- (2) In paragraph 2(c), at the end insert “, including any consultation under Article 36(1)”.
- (3) In paragraph 2(d), omit “technical and organisational”. 5
- (4) In paragraph 4(a), for “39” substitute “36”.

*The 2018 Act*

- 11 The 2018 Act is amended as follows.
- 12 In section 33 (other definitions for Part 3), after subsection (6) insert— 10
- “(6A) “Senior responsible individual” means an individual designated as the senior responsible individual of a controller or processor under section 58A.”
- 13 In section 44(1)(b) (controller’s duty to provide information), for “data protection officer (see sections 69 to 71)” substitute “senior responsible individual”. 15
- 14 In section 55(1) (overview of provisions in Part 3 about controllers and processors)— 20

- (a) in paragraph (a), for “and processors (see sections 56 to 65)” substitute “(see sections 56 to 58)”;
- (b) after that paragraph insert—
- “(aa) makes provision for the designation, tasks and position of senior responsible individuals (see sections 58A to 58C); 5
  - (ab) makes provision about processors (see section 59) and processing under the authority of the controller or processor (see section 60); 10
  - (ac) makes provision about records (see sections 61A and 62) and co-operation with the Commissioner (see section 63); 15
  - (ad) makes provision about risk assessment (see section 64) and prior consultation with the Commissioner (see section 65);”, and 20
- (c) omit paragraph (d).

- 15 In section 67(4)(b) (notification of a personal data breach to the Commissioner), for “data protection officer” substitute “senior responsible individual”. 5
- 16 In section 68(2)(b) (communication of a personal data breach to the data subject), for “data protection officer” substitute “senior responsible individual”.
- 17 (1) Section 134 (Commissioner’s power to charge fees for services) is amended as follows. 10
- (2) The existing text becomes subsection (1).
- (3) In that subsection, for “data protection officer” substitute “senior responsible individual”. 15
- (4) After that subsection insert—
- “(2) In this section, “senior responsible individual” means an individual designated as the senior responsible individual of a controller or processor under Article 27A of the UK GDPR or section 58A of this Act.” 20

- 18 In section 149(2)(c)  
(enforcement notices)—  
(a) for “39” substitute “35”, and  
(b) omit “or 65”.
- 19 In section 155(3) (penalty notices)— 5  
(a) in paragraph (c), at the end insert  
“, including any consultation  
under section 65”, and  
(b) in paragraph (d), omit “technical  
and organisational”. 10
- 20 In section 206 (index of defined  
expressions), in the Table, at the  
appropriate place insert—  
“senior responsible individual (in Part 3) section 33”. 15
- 21 In paragraph 41 of Schedule 1 (additional  
safeguards for processing of special  
categories of personal data etc: record  
of processing), for “30” substitute “30A”.

- 22 In paragraph 26(9)(c) of Schedule 2 (exemptions etc from the UK GDPR: journalistic, academic, artistic and literary purposes), omit sub-paragraph (ii).

SCHEDULE 5 Section 23 5

TRANSFERS OF PERSONAL DATA TO THIRD COUNTRIES ETC: GENERAL PROCESSING

*Introduction*

- 1 Chapter 5 of the UK GDPR (transfers of personal data to third countries or international organisations) is amended as follows. 10

*General principles for transfers*

- 2 (1) Omit Article 44 (transfers of personal data to third countries etc: general principles for transfers). 15
- (2) After that Article insert—

**General principles for transfers**

A controller or processor may transfer personal

data to a third country or an international organisation only if—the condition in paragraph 2 is met, and the transfer is carried out in compliance with the other provisions of this Regulation.<sup>2</sup>

5

The condition is met if the transfer—

is approved by regulations under Article 45A that are in force at the time of the transfer, is made subject to appropriate safeguards (see Article 46), or is made in reliance on a derogation for specific situations (see Article 49).<sup>3</sup> A transfer may not be made in reliance on paragraph 2(b) or (c) if, or to the extent that, it would breach a restriction in regulations under Article 49A.”

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15

### *Transfers approved by regulations*

3 Omit Article 45 (transfers on the basis of an adequacy decision).

4 After that Article insert—

### **Transfers approved by regulations**

20

For the purposes of Article 44A, the Secretary of State may by regulations

- approve transfers of personal data to—a third country, or an international organisation.<sup>2</sup> The Secretary of State may only make regulations under this Article approving transfers to a third country or international organisation if the Secretary of State considers that the data protection test is met in relation to the transfers (see Article 45B). 5
3. In making regulations under this Article, the Secretary of State may have regard to any matter which the Secretary of State considers relevant, including the desirability of facilitating transfers of personal data to and from the United Kingdom. 10 15
4. Regulations under this Article may, among other things—
- make provision in relation to a third country or international organisation specified in the regulations or a description of country or organisation; approve all transfers of personal 20

- data to a third country or international organisation or only transfers specified or described in the regulations; identify a transfer of personal data by any means, including by reference to—(i) a sector or geographic area within a third country,
- (ii) the controller or processor,
- (iii) the recipient of the personal data,
- (iv) the personal data transferred,
- (v) the means by which the transfer is made, or
- (vi) relevant legislation, schemes, lists or other arrangements or documents, as they have effect from time to time;

confer a discretion on a person.<sup>5</sup> Regulations

under this Article are subject to the negative resolution procedure.

### **The data protection test**

For the purposes of Article 45A, the data protection test is met in relation to transfers of personal data to a third country or international organisation if the standard of the protection provided for data subjects with regard to general processing of personal data in the country or by the organisation is not materially lower than the standard of the protection provided for data subjects by or under— this Regulation, Part 2 of the 2018 Act, and Parts 5 to 7 of that Act, so far as relevant to general processing.<sup>2</sup> In considering whether the data protection test is met in relation to transfers of personal data to a third country or international organisation, the Secretary of State must consider, among other things—

respect for the rule of law and for human rights in the country or by the organisation, the existence, and powers, of an authority

responsible for enforcing the protection of data subjects with regard to the processing of personal data in the country or by the organisation, arrangements for judicial or non-judicial redress for data subjects in connection with such processing, rules about the transfer of personal data from the country or by the organisation to other countries or international organisations, relevant international obligations of the country or organisation, and the constitution, traditions and culture of the country or organisation.	5
3. In paragraphs 1 and 2—	
the references to the protection provided for data subjects are to that protection taken as a whole, the references to general processing are to processing to which this Regulation applies or equivalent types of processing in the third country or by the international organisation (as appropriate), and the references to processing of personal data in the third country or by the international organisation are references only to the processing of personal data	15 20 25

transferred to the country or organisation by means of processing to which this Regulation applies as described in Article 3.4. When the data protection test is applied only to certain transfers to a third country or international organisation that are specified or described, or to be specified or described, in regulations (in accordance with Article 45A(4)(b))—

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*the references in paragraphs 1 to 3 to personal data are to be read as references only to personal data likely to be the subject of such transfers, and the reference in paragraph 2(d) to transfer to other countries or international organisations is to be read as including transfer within the third country or international organisation.*”*Transfers approved by regulations: monitoring*

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5 After Article 45B (inserted by paragraph 4) insert—

**Transfers approved by regulations:  
monitoring**

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“Article 45C — 1. The Secretary of State must, on an ongoing basis, monitor

- developments in third countries and international organisations that could affect decisions to make regulations under Article 45A or to amend or revoke such regulations. 5
2. Where the Secretary of State becomes aware that the data protection test is no longer met in relation to transfers approved, or of a description approved, in regulations under Article 45A, the Secretary of State must, to the extent necessary, amend or revoke the regulations. 10
3. Where regulations under Article 45A are amended or revoked in accordance with paragraph 2, the Secretary of State must enter into consultations with the third country or international organisation concerned with a view to improving the protection provided to data subjects with regard to the processing of personal data in the country or by the organisation. 15 20
4. The Secretary of State must publish—  
a list of the third countries and international organisations, and the descriptions of

such countries and organisations, which are for the time being approved by regulations under Article 45A as places or persons to which personal data may be transferred, and a list of the third countries and international organisations, and the descriptions of such countries and organisations, which have been but are no longer approved by such regulations.<sup>5</sup>

In the case of regulations under Article 45A which approve only certain transfers to a third country or international organisation specified or described in the regulations (in accordance with Article 45A(4)(b)), the lists published under paragraph 4 must specify or describe the relevant transfers.”

*Transfers subject to appropriate safeguards*

- 6 (1) Article 46 (transfers subject to appropriate safeguards) is amended as follows.
- (2) Omit paragraph 1.
- (3) After that paragraph insert—

A transfer of personal data  
to a third country or an

- international organisation  
by a controller or processor  
is made subject to  
appropriate safeguards  
only—in a case in which— 5
- (i) safeguards are provided  
in connection with the  
transfer as described  
in paragraph 2 or 3 or  
regulations made under 10  
Article 47A(4), and
- (ii) the controller or processor,  
acting reasonably  
and proportionately,  
considers that the data 15  
protection test is met in  
relation to the transfer  
or that type of transfer  
(see paragraph 6), or
- in a case in which—(i) 20  
safeguards are provided in  
accordance with paragraph  
2(a) by an instrument that is  
intended to be relied on in

- connection with the transfer  
or that type of transfer, and
- (ii) each public body that is  
a party to the instrument,  
acting reasonably and  
proportionately, considers  
that the data protection  
test is met in relation to  
the transfers, or types  
of transfer, intended  
to be made in reliance  
on the instrument  
(see paragraph 6).”
- (4) In paragraph 2—
- (a) in the words before point (a)—
- (i) omit “appropriate”, and
- (ii) for “paragraph 1” substitute  
“paragraph 1A(a)”,
- (b) in point (a), for “public authorities or  
bodies” substitute “a public body and  
another relevant person or persons”,
- (c) in point (b), after “rules”  
insert “approved”,

- (d) in point (c), for “section 17C of the 2018 Act” substitute “Article 47A(1)”,
  - (e) in point (e), for “appropriate safeguards” substitute “safeguards provided by the code”, and 5
  - (f) in point (f), for “appropriate safeguards” substitute “safeguards provided by the mechanism”.
- (5) In paragraph 3, in the words before point (a)— 10
- (a) omit “appropriate”,
  - (b) for “paragraph 1” substitute “paragraph 1A(a)”,
  - (c) omit “, in particular,”, and
  - (d) in point (b), for “public authorities or bodies” substitute “a public body and another relevant person or persons”. 15
- (6) At the end insert—

For the purposes of this Article, the data protection test is met in relation to a transfer, or a type of transfer, of personal data if, after the transfer, the standard of the protection provided for the data subject with regard to that personal data by the safeguards required under paragraph 1A, and (where relevant) by other means, would not be materially lower than the standard of the protection provided for the data subject with regard to the personal data by or under— this Regulation, Part 2 of the 2018 Act, and Parts 5 to 7 of that Act, so far as relevant to processing to which this Regulation applies. For the purposes of paragraph 1A(a)(ii) and (b)(ii), what is reasonable and proportionate is to be determined by reference to all the circumstances, or likely circumstances, of the transfer or type of transfer, including the nature and volume of the personal data transferred. In this Article—references to the protection provided for the data subject are to that

protection taken as a whole; “relevant person” means a public body or another person exercising functions of a public nature.”<sup>7</sup> In the heading of Article 47 (binding corporate rules) at the beginning insert “Transfers subject to appropriate safeguards:”.

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8 After Article 47 insert—

**Transfers subject to appropriate  
safeguards: further provision**

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“Article 47A — 1. The Secretary of State may by regulations specify standard data protection clauses which the Secretary of State considers are capable of securing that the data protection test set out in Article 46 is met in relation to transfers of personal data generally or in relation to a type of transfer specified in the regulations.

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2. The Secretary of State must keep under review the standard data protection clauses specified in regulations under paragraph 1 that are for the time being in force.

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3. Regulations under paragraph 1 are subject to the negative resolution procedure.
4. The Secretary of State may by regulations make provision about further safeguards that may be relied on for the purposes of Article 46(1A)(a). 5
5. The Secretary of State may only make regulations under paragraph 4 if the Secretary of State considers that the further safeguards are capable of securing that the data protection test set out in Article 46 is met in relation to transfers of personal data generally or in relation to a type of transfer specified in the regulations. 10
6. Regulations under paragraph 4 may, among other things— 15
  - make provision by adopting safeguards prepared or published by another person;make provision about ways of providing safeguards which require authorisation from the Commissioner;amend 20

- Article 46 by—(i)  
adding ways of providing  
safeguards, or
- (ii) varying or omitting ways of  
providing safeguards which 5  
were added by regulations  
under this Article.
7. Regulations under paragraph 4 are subject  
to the affirmative resolution procedure.”
- Derogations for specific situations* 10
- 9 (1) Article 49 (derogations for specific  
situations) is amended as follows.
- (2) In paragraph 1, in the first  
subparagraph—
- (a) for “adequacy regulations under 15  
section 17A of the 2018 Act, or of  
appropriate safeguards pursuant  
to Article 46, including binding  
corporate rules” substitute “approval  
by regulations under Article 45A 20  
and of compliance with Article 46  
(appropriate safeguards)”, and

- (b) in point (a), for “an adequacy decision” substitute “approval by regulations under Article 45A”.
- (3) In paragraph 1, in the second subparagraph, for “a provision in Article 45” substitute “Article 45A”. 5
- (4) In paragraph 4, for “section 18(1) of the 2018 Act” substitute “paragraph 4A”.
- (5) After paragraph 4 insert—
- “4A The Secretary of State may by regulations specify for the purposes of point (d) of paragraph 1— 10
- (a) circumstances in which a transfer of personal data to a third country or international organisation is to be taken to be necessary for important reasons of public interest, and 15
- (b) circumstances in which a transfer of personal data to a third country or international organisation which is not required by an enactment is not to be taken to 20

be necessary for important reasons of public interest.”

(6) Omit paragraph 5A.

(7) After paragraph 6 insert—

*Regulations under this Article—are subject to the made affirmative resolution procedure where the Secretary of State has made an urgency statement in respect of them; otherwise, are subject to the affirmative resolution procedure. For the purposes of this Article, an urgency statement is a reasoned statement that the Secretary of State considers it desirable for the regulations to come into force without delay.”Public interest restrictions*

10 After Article 49 insert— 15

### **Restriction in the public interest**

The Secretary of State may by regulations restrict the transfer of a category of personal data to a third country or international organisation where—the transfer is not approved by regulations under Article 45A for the time being

in force, and the Secretary of State considers the restriction to be necessary for important reasons of public interest.<sup>2</sup> Regulations under this Article—

are subject to the made affirmative resolution procedure where the Secretary of State has made an urgency statement in respect of them; otherwise, are subject to the affirmative resolution procedure.<sup>3</sup> For the purposes of this Article, an urgency statement is a reasoned statement that the Secretary of State considers it desirable for the regulations to come into force without delay.”

## SCHEDULE 6      Section 23      15

### TRANSFERS OF PERSONAL DATA TO THIRD COUNTRIES ETC: LAW ENFORCEMENT PROCESSING

#### *Introduction*

1 Chapter 5 of Part 3 of the 2018 Act (transfers of personal data to third countries etc) is amended as follows. 20

*Overview and interpretation*

- 2 In section 72 (overview and interpretation), for subsection (2) substitute—
- “(2) In this Chapter— 5
- “relevant authority”, in relation to a third country, means any person based in a third country that has (in that country) functions comparable to those of a competent authority; 10
- “relevant international organisation” means an international organisation that carries out functions for any of the law enforcement purposes; 15
- “relevant restricted transfer case” means (subject to subsection (3)) a case in which the personal data was originally made available to a competent authority (whether the current controller or a previous controller)— 20
- (a) by a relevant authority in a

third country or by a relevant international organisation, and

- (b) subject to a condition (however imposed) that the data is not to be transferred to a third country or international organisation without authorisation from that authority or organisation or another such authority or organisation;

“overseas authoriser”, in connection with a relevant restricted transfer case, means the person whose authorisation is required.

- (3) In a case in which the personal data was originally made available to a competent authority subject to a condition that only requires authorisation for further transfers in certain circumstances, the case is a relevant restricted transfer case only in those circumstances.”

*General principles for transfer*

- 3 (1) Section 73 (general principles for transfers) is amended as follows.
- (2) In subsection (1)—
- (a) for “may not” substitute “may”, 5
  - (b) for “unless” substitute “for a law enforcement purpose only if”,
  - (c) omit paragraph (b) (and the “and” before it), and
  - (d) after that paragraph insert— 10
    - “(c) the transfer is carried out in accordance with the other provisions of this Part, and
    - (d) in a relevant restricted transfer case, the overseas authoriser 15 has authorised the transfer or subsection (5) applies.”
- (3) For subsection (3) substitute—
- “(3) Condition 2 is that the transfer—

- (a) is approved by regulations under section 74AA that are in force at the time of the transfer,
  - (b) is made subject to appropriate safeguards (see section 75), or 5
  - (c) is based on special circumstances (see section 76).”
- (4) In subsection (5)—
  - (a) for the words before 10  
paragraph (a) substitute “This subsection applies if—”,
  - (b) in paragraph (a), for the words from  
“either” to “State” substitute “to the 15  
public security, national security or  
essential interests of a third country  
or the United Kingdom”, and
  - (c) in paragraph (b), for “the  
authorisation” substitute 20  
“authorisation from the  
overseas authoriser”.
- (5) In subsection (6)—

- (a) for “without the authorisation” substitute “in a relevant restricted transfer case without the authorisation from the overseas authoriser”, and 5
- (b) for the words from “(1)(b)” to “the transfer” substitute “(1)(d), the overseas authoriser”.
- (6) Omit subsection (7).
- Transfers approved by regulations* 10
- 4 (1) Omit section 74A (transfers based on adequacy regulations).
- (2) After that section insert—
- “74AA Transfers approved by regulations**
- (1) For the purposes of section 73, 15  
the Secretary of State may by regulations approve transfers of personal data to—
- (a) a third country, or
- (b) an international organisation. 20
- (2) The Secretary of State may only

- make regulations under this section approving transfers to a third country or international organisation if the Secretary of State considers that the data protection test is met in relation to the transfers (see section 74AB). 5
- (3) In making regulations under this section, the Secretary of State may have regard to any matter which the Secretary of State considers relevant, including the desirability of facilitating transfers of personal data to and from the United Kingdom. 10
- (4) Regulations under this section may, among other things— 15
- (a) make provision by reference to a third country or international organisation specified in the regulations or a description of country or organisation; 20
- (b) approve all transfers of personal data to a third country or international organisation

- or only transfers specified or described in the regulations;
- (c) identify a transfer of personal data by any means, including by reference to—
- (i) a sector or geographic area within a third country,
  - (ii) the controller or processor,
  - (iii) the recipient of the personal data,
  - (iv) the personal data transferred,
  - (v) the means by which the transfer is made, or
  - (vi) relevant legislation, schemes, lists or other arrangements or documents, as they have effect from time to time;
- (d) confer a discretion on a person.
- (5) Regulations under this section

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are subject to the negative resolution procedure.

## **74AB The data protection test**

- (1) For the purposes of section 74AA, the data protection test is met in relation to transfers to a third country or international organisation if the standard of the protection provided for data subjects with regard to law enforcement processing of personal data in the country or by the organisation is not materially lower than the standard of the protection provided for data subjects by or under—
- (a) this Part, and
  - (b) Parts 5 to 7, so far as relevant to law enforcement processing.
- (2) In considering whether the data protection test is met in relation to transfers of personal data to a third country or international

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organisation, the Secretary of State must consider, among other things—

- (a) respect for the rule of law and for human rights in the country or by the organisation, 5
- (b) the existence, and powers, of an authority responsible for enforcing the protection of data subjects with regard to the processing of personal data in the country or by the organisation, 10
- (c) arrangements for judicial or non-judicial redress for data subjects in connection with such processing, 15
- (d) rules about the transfer of personal data from the country or by the organisation to other countries or international organisations, 20

- (e) relevant international obligations of the country or organisation, and
  - (f) the constitution, traditions and culture of the country or organisation. 5
- (3) In subsections (1) and (2)—
  - (a) the references to the protection provided for data subjects are to that protection taken as a whole, 10
  - (b) the references to law enforcement processing are to processing by a competent authority for any of the law enforcement purposes or equivalent types of processing in the third country or by the international organisation (as appropriate), and 15
  - (c) the references to processing of personal data in the third country or by the international 20

organisation are references only to the processing of personal data transferred to the country or organisation by means of processing to which this Act applies as described in section 207(2).

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- (4) When the data protection test is applied only to certain transfers to a third country or international organisation that are specified or described, or to be specified or described, in regulations (in accordance with section 74AA(4)(b))—

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- (a) the references in subsections (1) to (3) to personal data are to be read as references only to personal data likely to be the subject of such transfers, and

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- (b) the reference in subsection (2) (d) to transfer to other countries or international organisations is to be read as including

transfer within the third country  
or international organisation.”

*Transfers approved by regulations: monitoring*

- 5 (1) Section 74B (transfers based on adequacy regulations: review etc) is amended as follows. 5
- (2) For the heading substitute “Transfers approved by regulations: monitoring”.
- (3) Omit subsections (1) and (2).
- (4) In subsection (3), for “under section 74A” substitute “giving approval under section 74AA”. 10
- (5) In subsection (4), for the words from the beginning to “otherwise,” substitute “Where the Secretary of State becomes aware that the data protection test is no longer met in relation to transfers approved, or of a description approved, in regulations under section 74AA,”. 15
- (6) In subsection (5)— 20
- (a) for “section 74A” substitute “section 74AA”, and

- (b) for “remedying the lack of an adequate level of protection” substitute “improving the protection provided to data subjects with regard to the processing of personal data in the country or by the organisation”. 5
- (7) In subsection (6)(a)—
- (a) omit “, territories and specified sectors within a third country”,
- (b) omit “, territories, sectors”, and 10
- (c) for “specified in regulations under section 74A” substitute “approved by regulations under section 74AA as places or persons to which personal data may be transferred”. 15
- (8) In subsection (6)(b)—
- (a) omit “, territories and specified sectors within a third country”,
- (b) omit “, territories, sectors”, and
- (c) for “specified in” substitute “approved by”. 20
- (9) In subsection (7)—

- (a) for “regulations under section 74A which specify that an adequate level of protection of personal data is ensured only for a transfer” substitute “regulations under section 74AA which approve only certain transfers to a third country or international organisation that are”, 5
- (b) after “the regulations” insert “(in accordance with section 74AA(4)(b))”, and 10
- (c) omit paragraph (a) (together with the final “and”).

*Transfers subject to appropriate safeguards*

- 6 (1) Section 75 (transfers on the basis of appropriate safeguards) is amended as follows. 15
- (2) In the heading, for “on the basis of” substitute “subject to”.
- (3) Omit subsection (1). 20
- (4) After that subsection insert—
- “(1A) A transfer of personal data to a

third country or an international organisation is made subject to appropriate safeguards only if—

(a) the controller, acting reasonably and proportionately, considers that the data protection test is met in relation to the transfer or that type of transfer (see subsection (5)), or

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(b) an appropriate legal instrument binds the intended recipient of the data (see subsection (4)).”

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(5) In subsection (2), for “subsection (1)(b)” substitute “this section”.

(6) In subsection (3), for “subsection (1)” substitute “this section”.

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(7) At the end insert—

“(4) For the purposes of this section, a legal instrument is “appropriate”, in relation to a transfer of personal data, if—

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- (a) the instrument is intended to be relied on in connection with the transfer or that type of transfer,
  - (b) at least one competent authority is a party to the instrument, and 5
  - (c) each competent authority that is a party to the instrument, acting reasonably and proportionately, considers that the data protection test is met 10  
in relation to the transfers, or types of transfer, intended to be made in reliance on the instrument (see subsection (5)).
- (5) For the purposes of this section, the data protection test is met in relation to a transfer, or a type of transfer, of personal data if, after the transfer, the standard of the protection provided for the data subject with regard to that personal data, whether by a binding legal instrument or by other means, would not be materially lower than the standard of the protection provided 15 20

for the data subject with regard to the personal data by or under—

- (a) this Part, and
  - (b) Parts 5 to 7, so far as they relate to processing by a competent authority for any of the law enforcement purposes. 5
- (6) For the purposes of subsections (1A)(a) and (4)(c), what is reasonable and proportionate is to be determined by reference to all the circumstances, or likely circumstances, of the transfer or type of transfer, including the nature and volume of the personal data transferred. 10 15
- (7) In this section, references to the protection provided for the data subject are to that protection taken as a whole.”

*Transfers based on special circumstances*

- 7 (1) Section 76 (transfers on the basis of special circumstances) is amended as follows.
- (2) In the heading, for “on the basis of” substitute “based on”. 5
- (3) Before subsection (1) insert—
- “(A1) A transfer of personal data to a third country or international organisation is based on special circumstances where— 10
- (a) it is made in the absence of approval by regulations under section 74AA and of compliance with section 75 (appropriate safeguards), and 15
- (b) it is necessary for a special purpose.”
- (4) In subsection (1)—
- (a) for the words before paragraph (a) substitute “A transfer of personal 20

- data is necessary for a special purpose if it is necessary—”,
- (b) in paragraph (c)—
- (i) after “public security” insert “or national security”, and 5
- (ii) at the end insert “or the United Kingdom”,
- (c) in paragraph (d), for “in individual cases” substitute “in particular circumstances,”, and 10
- (d) in paragraph (e), for “in individual cases” substitute “in particular circumstances,”.
- (5) In subsection (2), for “But subsection (1)(d) and (e) do not apply” substitute “But a transfer of personal data is not necessary for a special purpose by virtue of subsection (1)(d) or (e)”. 15
- (6) After subsection (2) insert—
- “(2A) In accordance with the third data protection principle, the amount of personal data transferred in reliance on this section must not 20

be excessive in relation to the special purpose relied on.”

- (7) In subsection (3), for “subsection (1)” substitute “this section”.

*Subsequent transfers*

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- 8 (1) Section 78 (subsequent transfers) is amended as follows.

- (2) In subsection (1)—

(a) after “transfer” insert “—

(b) at the end insert “(the “UK authoriser”), or

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(b) (subject to subsection (4)) that—

(i) the data is not to be so transferred without such authorisation except where subsection (1A) applies, and

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(ii) where a transfer is made without such authorisation, the UK authoriser must be informed without delay.”

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(3) After subsection (1) insert—

“(1A) This subsection applies if—

(a) the transfer is necessary for the prevention of an immediate and serious threat to the public security or national security of a third country or the United Kingdom, and

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(b) authorisation from the UK authoriser cannot be obtained in good time.”

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(4) In subsection (2), for “A competent authority” substitute “The UK authoriser”.

(5) In subsection (3), for “competent authority” substitute “UK authoriser”.

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(6) For subsection (4) substitute—

“(4) In a relevant restricted transfer case—

(a) the transferring controller must make the transfer subject to the condition described in subsection (1)(a), and

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- (b) the UK authoriser may not authorise a further transfer of personal data under subsection (1)(a) unless the overseas authoriser has authorised the further transfer or subsection (5) applies.” 5
- (7) In subsection (5)—
- (a) for the words before paragraph (a) substitute “This subsection applies if—”, 10
- (b) in paragraph (a), for the words from “either” to “State” substitute “to the public security, national security or essential interests of a third country or the United Kingdom”, and 15
- (c) in paragraph (b), for “the authorisation” substitute “authorisation from the overseas authoriser”. 20
- (8) In subsection (6)—
- (a) for “without the authorisation” substitute “in a relevant

- restricted transfer case without the authorisation from the overseas authoriser”, and
- (b) for the words from “(4)” to “the transfer” substitute “(4)(b), the overseas authoriser”.

## SCHEDULE 7 Section 23

### TRANSFERS OF PERSONAL DATA TO THIRD COUNTRIES ETC: CONSEQUENTIAL AND TRANSITIONAL PROVISION

#### Part 1

#### CONSEQUENTIAL PROVISION

##### *The UK GDPR*

- 1 The UK GDPR is amended as follows.
- 2 In Article 13(1)(f) (information to be provided where personal data is collected from the data subject)—
- (a) for “adequacy regulations under section 17A of the 2018

- Act” substitute “regulations under Article 45A”, and
- (b) for “reference to the appropriate or suitable safeguards” substitute “the safeguards relied on”. 5
- 3 In Article 14(1)(f) (information to be provided where personal data is not obtained from the data subject)—
- (a) for “adequacy regulations under section 17A of the 2018 Act” substitute “regulations under Article 45A”, and 10
- (b) for “reference to the appropriate or suitable safeguards” substitute “the safeguards relied on”. 15
- 4 In Article 15(2) (right of access by the data subject)—
- (a) after “organisation” insert “in reliance on Article 46”, and
- (b) for “appropriate safeguards pursuant to Article 46 relating to” substitute “safeguards provided in 20

accordance with Article 46(1A)(a)  
(i) or (b)(i) for the purposes of”.

- 5 (1) Article 40 (codes of conduct)  
is amended as follows.
- (2) In paragraph 3 omit “appropriate” 5  
in both places.
- (3) In paragraph 5, for “provides sufficient  
appropriate safeguards” substitute  
“is capable of providing safeguards  
for the purposes of Article 46”. 10
- 6 In Article 42(2) (certification) omit  
“appropriate” in both places.
- 7 In Article 57(1) (Information  
Commissioner’s tasks)—
- (a) in point (m) omit “which provide 15  
sufficient safeguards,”, and
- (b) after point (s) insert—
- “(sa) provide authorisation  
required under regulations  
made under Article 47A;”. 20

- 8 In Article 58(3) (authorisation and advisory powers of the Commissioner), after point (j) insert—
- “(k) to provide authorisation required under regulations made under Article 47A”. 5
- 9 In Article 83(5)(c) (general conditions for imposing administrative fines), for “44” substitute “44A”.
- The 2018 Act* 10
- 10 The 2018 Act is amended as follows.
- 11 Omit section 17A (transfers based on adequacy decisions) and the italic heading before it.
- 12 Omit section 17B (transfers based on adequacy regulations: review etc). 15
- 13 Omit section 17C (standard data protection clauses).
- 14 Omit section 18 (transfers of personal data to third countries etc: public interest). 20

- 15 In section 24(2) (manual unstructured data held by FOI public authorities)—
- (a) in paragraph (c), for “44 to 49” substitute “44A to 49A”, and
- (b) omit paragraph (ca). 5
- 16 In section 26(2) (national security and defence exemption), omit paragraph (fa).
- 17 In section 119A(1) (power of Information Commissioner to specify standard clauses for transfers to third countries etc providing appropriate safeguards), omit from “provide” to the end and insert “are capable of securing that the data protection test set out in Article 46 of the UK GDPR is met in relation to transfers of personal data generally or in relation to types of transfer described in the document”. 10 15
- 18 In section 149(2)(e) (enforcement notices), for “44 to 49” substitute “44A to 49A”. 20
- 19 (1) Section 182 (regulations and consultation) is amended as follows.

- (2) Omit subsection (4).
- (3) In subsection (6), for “Where regulations under this Act” substitute “For the purposes of this Act, where regulations”.
- (4) In subsection (7), for “Where regulations under this Act” substitute “For the purposes of this Act, where regulations”. 5
- (5) In subsection (8)—
  - (a) for “Where regulations under this Act” substitute “For the purposes of this Act, regulations”, 10
  - (b) after “procedure” insert “if”,
  - (c) in paragraph (a), for “the urgency” substitute “an urgency”, and
  - (d) in paragraph (b), for “the period of 120 days” substitute “a period”. 15
- (6) Omit subsections (9) and (10).
- (7) In subsection (11), after “by regulations” insert “made under this Act or another enactment that are”. 20
- (8) For subsection (14) substitute—

- “(14) For the purposes of this section, an urgency statement is a reasoned statement that the Secretary of State considers it desirable for regulations to come into force without delay.” 5
- 20 In section 205(2)(e) (references to periods of time) omit “and (9)”. 5
- 21 In paragraph 26(9)(d) of Schedule 2 (exemptions etc for journalistic, academic, artistic and literary purposes), for “44” substitute “44A”. 10
- 22 (1) Part 3 of Schedule 21 (further transitional provision etc: transfers to third countries and international organisations) is amended as follows. 15
- (2) In the heading before paragraph 4, for “adequacy decisions and adequacy regulations” substitute “transfers approved by regulations”.
- (3) In paragraph 4 (UK GDPR: adequacy decisions and adequacy regulations)— 20
- (a) in sub-paragraph (1), for “based on adequacy regulations” substitute

- “to be treated as approved by regulations made under Article 45A of the UK GDPR”,
- (b) in sub-paragraph (4)(a), for “lists or other” substitute “schemes, lists or other arrangements or”, and 5
- (c) omit sub-paragraph (6).
- (4) In paragraph 6 (UK GDPR: application of certain provisions referring to regulations made under section 17A of the 2018 Act)— 10
- (a) in sub-paragraph (1)(a), for “section 17A” substitute “Article 45A of the UK GDPR”,
- (b) for sub-paragraph (2) substitute— 15
- “(2) Those provisions are Articles 13(1)(f), 14(1)(f), 45C, 49(1) and 49A(1) of the UK GDPR.”, and
- (c) after that sub-paragraph insert—
- “(3) In its application to transfers treated as approved by virtue of paragraph 1, Article 45C(5) of the UK GDPR (transfers approved 20

by regulations: monitoring) has effect as if the reference to Article 45A(4)(b) were omitted.”

- (5) Omit paragraphs 7 and 8 (UK GDPR: transfers subject to appropriate safeguards provided by standard data protection clauses). 5
- (6) In paragraph 9 (UK GDPR: transfers subject to appropriate safeguards provided by binding corporate rules)— 10
- (a) in sub-paragraph (1)—
- (i) for “The appropriate safeguards referred to in Article 46(1) of the UK GDPR may be provided for” substitute “The requirement for safeguards to be provided under Article 46(1A)(a)(i) of the UK GDPR may be satisfied”, and 15
- (ii) after “described” insert “in”,
- (b) in sub-paragraph (3)(a)— 20
- (i) for “or provision” substitute “, of provision”, and

- (ii) for “(or both)” substitute “or of the amendment of Chapter 5 of the UK GDPR by the Data Protection and Digital Information Act 2023”, and 5
- (c) in sub-paragraph (4), after paragraph (a) insert—
- “(aa) changing references to provision made by regulations under section 17A into references to provision made by regulations made under Article 45A of the UK GDPR;”. 10
- (7) In the heading before paragraph 10, for “adequacy decisions and adequacy regulations” substitute “transfers approved by regulations”. 15
- (8) In paragraph 10 (law enforcement processing: adequacy decisions and adequacy regulations)— 20
- (a) in sub-paragraph (1), for “based on adequacy regulations” substitute “to be treated as

- approved by regulations made under section 74AA”,
- (b) in sub-paragraph (4)(a), for “lists or other” substitute “schemes, lists or other arrangements or”, and 5
- (c) omit sub-paragraph (6).
- (9) In paragraph 12 (Part 3 (law enforcement processing): application of certain provisions referring to regulations made under section 74A)— 10
- (a) the existing text becomes sub-paragraph (1),
- (b) in that sub-paragraph—
- (i) for the words before paragraph (a) substitute “In sections 74B and 76(A1)—”, and 15
- (ii) in paragraph (a), for “74A” substitute “74AA”, and
- (c) after that sub-paragraph insert—
- “(2) In its application to transfers treated as approved by virtue of paragraph 10, section 74B(7) (transfers approved by regulations: monitoring) 20

has effect as if the reference to section 74AA(4)(b) were omitted.”

## Part 2

### TRANSITIONAL PROVISION

*The UK GDPR: transfers approved by regulations* 5

23 (1) Regulations made under section 17A of the 2018 Act (transfers based on adequacy regulations) and in force immediately before the relevant day are to be treated, on and after that day, as if made under Article 45A of the UK GDPR (inserted by Schedule 5 to this Act). 10

(2) In this paragraph, “the relevant day” means the day on which paragraph 4 of Schedule 5 to this Act comes into force. 15

*The UK GDPR: transfers subject to appropriate safeguards*

24 (1) For the purposes of Article 44A(1)(a) and (2)(b) of the UK GDPR (general principles for transfers of personal data), a transfer of personal data to a third country or an 20

international organisation made on or after the relevant day is made subject to appropriate safeguards where—

- (a) the transfer is made under arrangements entered into before the relevant day, 5
- (b) safeguards are provided in accordance with paragraph 2 or 3 of Article 46 of the UK GDPR or paragraph 9 of Schedule 21 to the 2018 Act, and 10
- (c) if the transfer had been made immediately before the relevant day, it would have satisfied—
  - (i) the condition in Article 46(1) of the UK GDPR relating to data subjects' rights and legal remedies, and 15
  - (ii) the requirements of the last sentence of Article 44 of the UK GDPR (level of protection must not be undermined). 20

(2) Sub-paragraph (1) has effect in addition to Article 46(1A) of the UK GDPR.

- (3) In this paragraph—
- “international organisation” has the same meaning as in the 2018 Act (see section 205 of that Act);
- “personal data” has the same meaning as in the 2018 Act (see section 3 of that Act); 5
- “the relevant day” means the day on which paragraph 6 of Schedule 5 to this Act comes into force; 10
- “third country” has the same meaning as in Part 3 of the 2018 Act (see section 33 of that Act).
- The UK GDPR: transfers subject to appropriate safeguards provided by standard data protection clauses* 15
- 25 (1) Regulations made under section 17C of the 2018 Act (standard data protection clauses) and in force immediately before the relevant day are to be 20  
treated, on and after that day, as if made

under Article 47A(1) of the UK GDPR (inserted by Schedule 5 to this Act).

- (2) In this paragraph, “the relevant day” means the day on which paragraph 8 of Schedule 5 to this Act comes into force. 5
- 26 (1) This paragraph applies to a requirement for safeguards to be provided under—
- (a) Article 46(1A)(a)(i) of the UK GDPR, or
- (b) paragraph 24(1)(b) of this Schedule. 10
- (2) The requirement may be satisfied on and after the relevant day by a version of pre-commencement standard clauses incorporating changes where—
- (a) all of the changes are made in consequence of the amendment of Chapter 5 of the UK GDPR by this Act, and 15
- (b) none of the changes alters the effect of the clauses. 20
- (3) Changing a reference to regulations under section 17A of the 2018 Act into a reference to regulations

made under Article 45A of the UK GDPR is to be treated as a change falling within sub-paragraph (2).

- (4) Sub-paragraphs (2) and (3) cease to apply in relation to pre-commencement standard clauses if— 5
- (a) the clauses are specified in regulations and a provision of the regulations relating to the clauses is amended or revoked on or after the relevant day, or 10
- (b) the clauses are specified in another document and a provision of the document relating to the clauses is amended or withdrawn by the Information Commissioner on or after the relevant day. 15
- (5) Sub-paragraph (2) has effect in addition to Article 46(2) and (3) of the UK GDPR.
- (6) In this paragraph— 20
- “pre-commencement standard clauses” means standard data protection clauses specified in—

- (a) regulations made under section 17C of the 2018 Act and in force immediately before the relevant day, or
- (b) a document issued by the Information Commissioner under section 119A of the 2018 Act before the relevant day and not withdrawn before that day;

5

“the relevant day” means the day on which paragraph 6 of Schedule 5 to this Act comes into force.

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*The UK GDPR: transfers necessary for important reasons of public interest*

- 27 (1) Regulations made under section 18(1) of the 2018 Act (transfers necessary for important reasons of public interest) and in force immediately before the relevant day are to be treated, on and after that day, as if made under Article 49(4A) of the UK GDPR (inserted by Schedule 5 to this Act).

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- (2) In this paragraph, “the relevant day” means the day on which paragraph 9(5) of Schedule 5 to this Act comes into force.

*The UK GDPR: restrictions on transfers of personal data to third countries and international organisations* 5

- 28 (1) Regulations made under section 18(2) of the 2018 Act (restrictions on transfers of personal data to third countries and international organisations) and in force immediately before the relevant day are to be treated, on and after that day, as if made under Article 49A of the UK GDPR (inserted by Schedule 5 to this Act). 10 15

- (2) In this paragraph, “the relevant day” means the day on which paragraph 10 of Schedule 5 to this Act comes into force.

*Part 3 of the 2018 Act (law enforcement processing): transfers approved by regulations* 20

- 29 (1) Regulations made under section 74A of the 2018 Act (transfers based on

adequacy regulations) and in force immediately before the relevant day are to be treated, on and after that day, as if made under section 74AA of that Act (inserted by Schedule 6 to this Act).

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- (2) In this paragraph, “the relevant day” means the day on which paragraph 4 of Schedule 6 to this Act comes into force.

*Part 3 of the 2018 Act (law enforcement processing): transfers subject to appropriate safeguards*

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- 30 (1) For the purposes of section 73(3) of the 2018 Act (general principles for transfers of personal data), a transfer of personal data to a third country or an international organisation made on or after the relevant day is a transfer made subject to appropriate safeguards where—

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- (a) an appropriate pre-commencement legal instrument binds the intended recipient of the data, and

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- (b) if the transfer had been made immediately before the relevant

day, it would have been a transfer based on there being appropriate safeguards by virtue of that instrument and section 75(1)(a) of the 2018 Act.

5

(2) Sub-paragraph (1) has effect in addition to section 75(1A) of the 2018 Act.

(3) For the purposes of sub-paragraph (1), a legal instrument is an “appropriate pre-commencement legal instrument”, in relation to a transfer of personal data, if—

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(a) it was entered into before the relevant day,

(b) it is intended to be relied on in connection with the transfer or that type of transfer, and

15

(c) at least one competent authority is a party to the instrument.

(4) In this paragraph—

“competent authority” has the same meaning as in Part 3 of the 2018 Act (see section 30 of that Act);

20

“international organisation” has the same meaning as in the 2018 Act (see section 205 of that Act);

“personal data” has the same meaning as in the 2018 Act (see section 3 of that Act);

5

“the relevant day” means the day on which paragraph 6 of Schedule 6 to this Act comes into force;

“third country” has the same meaning as in Part 3 of the 2018 Act (see section 33 of that Act).

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## SCHEDULE 8      Section 43

### COMPLAINTS: MINOR AND CONSEQUENTIAL AMENDMENTS

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#### *The UK GDPR*

1      The UK GDPR is amended as follows.

- 2 In Article 12(4) (transparent information, communication and modalities for the exercise of the rights of the data subject), for “lodging a complaint with the Commissioner” substitute “making a complaint to the controller under section 164A of the 2018 Act, making a complaint to the Commissioner under section 165 of that Act”. 5
- 3 (1) Article 13(2) (information to be provided where personal data are collected from the data subject) is amended as follows. 10
- (2) After point (c) insert—
- “(ca) the right to make a complaint to the controller under section 164A of the 2018 Act;”. 15
- (3) In point (d), for “lodge a complaint with the Commissioner” substitute “make a complaint to the Commissioner under section 165 of the 2018 Act”. 20
- 4 (1) Article 14(2) (information to be provided where personal data have

not been obtained from the data subject) is amended as follows.

- (2) After point (d) insert—
- “(da) the right to make a complaint to the controller (see section 164A of the 2018 Act);”.
- (3) In point (e), for “lodge a complaint with the Commissioner” substitute “make a complaint to the Commissioner under section 165 of the 2018 Act”.
- 5 (1) Article 15(1) (right of access by the data subject) is amended as follows.
- (2) After point (e) insert—
- “(ea) the right to make a complaint to the controller under section 164A of the 2018 Act;”.
- (3) In point (f), for “lodge a complaint with the Commissioner” substitute “make a complaint to the Commissioner under section 165 of the 2018 Act”.

- 6 In Article 47 (binding corporate rules), in paragraph 2(e), for “lodge a complaint with the Commissioner and” substitute “make a complaint to the controller under section 164A of the 2018 Act, the right to make a complaint to the Commissioner under section 165 of the 2018 Act, the right to lodge a complaint”. 5
- 7 In Article 57 (Information Commissioner’s tasks)— 10
- (a) in paragraph 1, omit point (f), and
- (b) omit paragraph 2.
- 8 Omit Article 77 (right to lodge a complaint with the Commissioner).
- 9 (1) Article 80 (representation of data subjects) is amended as follows. 15
- (2) In paragraph 1—
- (a) for “lodge the complaint” substitute “make a complaint under section 164A or 165 of the 2018 Act”, and 20
- (b) omit “77,”.

- (3) In paragraph 2, for “lodge a complaint with the Commissioner” substitute “make a complaint under section 164A or 165 of the 2018 Act”.

*The 2018 Act*

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10 The 2018 Act is amended as follows.

11 In section 26(2)(f) (national security and defence exemption), omit sub-paragraph (zi) (inserted by section 26 of this Act).

12 (1) Section 44 (information: controller’s general duties) is amended as follows.

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(2) In subsection (1)—

(a) after paragraph (d) insert—

“(da) the existence of the right to make a complaint to the controller (see section 164A);”, and

15

(b) in paragraph (e), after “Commissioner”, in the first place it occurs, insert “(see section 165)”.  
20

(3) In subsection (5)—

- (a) after paragraph (c) insert—
- “(ca) of the data subject’s right to make a complaint to the controller under section 164A,”, and 5
- (b) in paragraph (d), after “Commissioner” insert “under section 165”.
- 13 (1) Section 45 (right of access by the data subject) is amended as follows. 10
- (2) In subsection (2)—
- (a) after paragraph (e) insert—
- “(ea) the existence of the data subject’s right to make a complaint to the controller (see section 164A);”, and 15
- (b) in paragraph (f), after “the Commissioner”, in the first place it occurs, insert “(see section 165)”.
- (3) In subsection (5)— 20
- (a) after paragraph (c) insert—

- “(ca) of the data subject’s right to make a complaint to the controller under section 164A,” and
- (b) in paragraph (d), at the end insert “under section 165”. 5
- 14 In section 45A (exemption from sections 44 and 45: legal professional privilege) (inserted by section 11 of this Act), in subsection (2), after paragraph (c) insert— 10
- “(ca) the data subject’s right to make a complaint to the controller under section 164A,”.
- 15 (1) Section 48 (rights to rectification, to erasure or to restriction of processing: supplementary) is amended as follows. 15
- (2) In subsection (1)(b)—
- (a) after sub-paragraph (ii) insert—
- “(iia)of the data subject’s right to make a complaint to the controller under section 164A,” and 20

- (b) in sub-paragraph (iii), after  
“Commissioner” insert  
“under section 165”.
- (3) In subsection (4)—
- (a) after paragraph (b) insert— 5
- “(ba) of the data subject’s right  
to make a complaint  
to the controller under  
section 164A,” and
- (b) in paragraph (c), after 10  
“Commissioner” insert  
“under section 165”.
- 16 In section 93(1)(e) (right to information),  
after “Commissioner”, in the first place  
it occurs, insert “under section 165”. 15
- 17 In section 94(2)(f) (right of access),  
after “Commissioner”, in the first place  
it occurs, insert “under section 165”.
- 18 In section 135 (manifestly unfounded or  
excessive requests by data subjects), 20  
after subsection (5) (inserted by  
section 34 of this Act), insert—

- “(6) In this section, “request” does not include a complaint under section 165.”
- 19 (1) Section 149 (enforcement notices) is amended as follows. 5
- (2) In subsection (1), for “or (5)” substitute “, (5) or (5A)”.
- (3) After subsection (5) insert—
- “(5A) The fifth type of failure is where a controller has failed, or is failing, to comply with section 164A or with regulations under section 164B.” 10
- (4) In subsection (6), for “or (5)” substitute “, (5) or (5A)”.
- 20 In section 155 (penalty notices), in subsection (1)(a), for “or (5)” substitute “, (5) or (5A)”. 15
- 21 In section 157 (maximum amount of penalty), after subsection (4) insert—
- “(4A) In relation to an infringement of section 164A or of regulations under section 164B, the maximum 20

amount of the penalty that may be imposed by a penalty notice is the standard maximum amount.”

- 22 In section 165 (complaints by data subjects), in the heading, at the end insert “to the Commissioner”. 5
- 23 (1) Section 166 (orders to progress complaints) is amended as follows.
- (2) In the heading, at the end insert “to the Commissioner”. 10
- (3) In subsection (1), omit “or Article 77 of the UK GDPR”.
- 24 (1) Section 187 (representation of data subjects with their authority) is amended as follows. 15
- (2) In subsection (1)(a)—
- (a) for “Articles 77,” substitute “sections 164A and 165 (complaints) and Articles”, and
- (b) omit “to lodge complaints and”. 20
- (3) In subsection (2)—
- (a) before paragraph (a) insert—

“(za) the right under section 164A (complaints to the controller);”, and

(b) in paragraph (a), for “165(2) and (4)(d)” substitute “165”.

5

25 (1) Section 204A (vexatious or excessive) (inserted by section 8 of this Act) is amended as follows.

(2) After subsection (1) insert—

“(1A) For the purposes of this Act, whether a complaint to the Commissioner is vexatious or excessive must be determined having regard to the circumstances of the complaint, including (so far as relevant)—

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15

(a) the nature of the complaint,

(b) the complainant’s relationship with the person who is the subject of the complaint (“the subject”) and the Commissioner,

20

(c) the resources available to the Commissioner,

- (d) the extent to which the complaint repeats a previous complaint made by the complainant to the subject or the Commissioner, 5
  - (e) how long ago any previous complaint was made, and
  - (f) whether the complaint overlaps with other complaints made by the complainant to the subject or the Commissioner.” 10
- (3) In subsection (2), after “requests”, in both places it occurs, insert “and complaints”.

## SCHEDULE 9 Section 47

### DATA PROTECTION: MINOR AMENDMENTS 15

#### *The UK GDPR*

- 1 The UK GDPR is amended as follows.
- 2 (1) Article 4(1) (interpretation) is amended as follows.
- (2) After point (A3) insert— 20

- “the data protection legislation” has the same meaning as in the 2018 Act (see section 3(9) of that Act);”.(3)  
After point (15) insert—
- “direct marketing” means the communication (by whatever means) of advertising or marketing material which is directed to particular individuals;”.(4)  
After point (28) insert—
- “enactment” has the same meaning as in the 2018 Act (see section 205 of that Act);“tribunal” means any tribunal in which legal proceedings may be brought.”<sup>3</sup> In Article 9 (processing of special categories of personal data)—
- (a) in paragraph 2, after “apply if” insert “the processing is based on Article 6(1) and”,
- (b) in paragraph 2(f), after “courts” insert “or tribunals”, and
- (c) in paragraph 3, for the words from the beginning to “data are” substitute “Paragraph 1 is only

disapplied by point (h) of paragraph 2 if the personal data is”.

- 4 In Article 12(5) (information etc to be provided free of charge), at the beginning insert “Subject to Article 15(3),”. 5
- 5 In Article 23(1)(h) (restrictions), for “(a)” substitute “(c)”.
- 6 In Article 24(3) (responsibility of the controller), for “an element by which to demonstrate” substitute “a means of demonstrating”. 10
- 7 In Article 25(3) (data protection by design and by default), for “an element to demonstrate” substitute “a means of demonstrating”. 15
- 8 In Article 28(5) (processors), for “an element by which to demonstrate” substitute “a means of demonstrating”.
- 9 In Article 32(3) (security of processing), for “an element by which to demonstrate” substitute “a means of demonstrating”. 20

10 In Article 37(1)(a), after “courts”  
insert “and tribunals”.

11 Omit Article 59 (activity reports).

*The 2018 Act*

12 The 2018 Act is amended as follows. 5

13 In section 3(9) (definition of “the  
data protection legislation”)—

(a) insert “and” at the end of  
paragraph (c), and

(b) omit paragraph (e) (regulations 10  
under section 2(2) of the European  
Communities Act 1972 which  
relate to the EU GDPR or the  
Law Enforcement Directive) and  
the “and” immediately before it. 15

14 Omit section 20 (meaning  
of “court” in Part 2).

15 In section 119A(11) (standard clauses  
for transfers to third countries etc), after  
“any” insert “whole days that fall within a”. 20

- 16 In section 124(5) (data protection and journalism code), in the definition of “good practice in the processing of personal data for the purposes of journalism”— 5
- (a) in paragraph (a), omit “, including compliance with the requirements of the data protection legislation”, and
- (b) after paragraph (b) insert— 10
- “and includes compliance with the requirements of the data protection legislation;”.
- 17 In section 125(8) (approval of codes prepared by the Commissioner), after “any” insert “whole days that fall within a”. 15
- 18 In section 139 (reporting to Parliament), omit subsection (2).
- 19 In section 161(6) (approval of first guidance about regulatory action), after “any” insert “whole days that fall within a”. 20
- 20 In section 184(4) (prohibition of requirement to produce relevant records), after “prevention” insert “, investigation”.

- 21 In section 192(6) (approval of the Framework), after “any” insert “whole days that fall within a”.
- 22 (1) Schedule 1 (special categories of personal data and criminal convictions etc data) is amended as follows. 5
- (2) In the heading before paragraph 10, for “or detecting” substitute “etc”.
- (3) In paragraph 10(1)(a) (preventing etc unlawful acts), after “prevention” insert “, investigation”. 10
- (4) In paragraph 13(1)(a) (journalism etc in connection with unlawful acts and dishonesty etc), after “consists of” insert “, or is carried out in preparation for,”. 15
- (5) In paragraph 14(1)(b) (preventing fraud), after sub-paragraph (ii) (but before the “or” at the end of that sub-paragraph) insert—
- “(iia)the processing of 20  
personal data carried  
out in preparation for

disclosure described in  
sub-paragraph (i) or (ii),”.

- (6) In paragraph 24(1)(a) (disclosure to elected representatives), after “consists of” insert “, or is carried out in preparation for,”. 5
- 23 (1) Schedule 2 (exemptions etc from the UK GDPR) is amended as follows.
- (2) In paragraph 2(1)(a) (crime), after “prevention” insert “, investigation”. 10
- (3) In paragraph 3(2)(b)(ii) (crime: risk assessment systems), after “prevention” insert “, investigation”.
- 24 In paragraph 8(1)(b) of Schedule 8 (conditions for sensitive processing under Part 3: preventing fraud), after sub-paragraph (ii) (but before the “or” at the end of that sub-paragraph) insert—
- “(iia)the processing of personal data carried out in preparation for disclosure described in sub-paragraph (i) or (ii),”.
- 20

25 In paragraph 2(a) of Schedule 11 (other exemptions under Part 4: crime), after “prevention” insert “, investigation”.

SCHEDULE 10 Section 90

PRIVACY AND ELECTRONIC COMMUNICATIONS: 5  
 COMMISSIONER’S ENFORCEMENT POWERS

THIS IS THE Schedule to be substituted for Schedule 1 to the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426)—“Schedule 1 Regulation 31 10

INFORMATION COMMISSIONER’S ENFORCEMENT POWERS 15

*Provisions applied for enforcement purposes*

1 For the purposes of enforcing these Regulations, the following provisions of Parts 5 to 7 of the Data Protection Act 2018 apply with the modifications set out in paragraphs 2 to 30— 20

<i>section 140 (publication by the Commissioner);section 141 (notices from the Commissioner);section 142 (information notices);section 143 (information notices: restrictions);section 144 (false statements made in response to an information notice);section 145 (information orders);section 146 (assessment notices);section 146A (assessment notices: approval of person to prepare report);section 147 (assessment notices: restrictions);section 148 (destroying or falsifying information and documents etc);section 148A (interview notices);section 148B (interview notices: restrictions);section 148C (false statements made in response to interview notices);section 149 (enforcement notices);section 150 (enforcement notices: supplementary);section 152 (enforcement notices: restrictions);section 153 (enforcement notices: cancellation and variation);section 154 and Schedule 15 (powers of entry and inspection);section 155 and Schedule 16 (penalty notices);section 156 (penalty notices: restrictions);section 157 (maximum amount of penalty);section 159 (amount of penalties:</i>	<i>5</i>
	<i>10</i>
	<i>15</i>
	<i>20</i>
	<i>25</i>

*supplementary);section 160 (guidance about regulatory action);section 161 (approval of first guidance about regulatory action);section 162 (rights of appeal);section 163 (determination of appeals);section 164 (applications in respect of urgent notices);section 180 (jurisdiction);section 181 (interpretation of Part 6);section 182 (regulations and consultation);section 196 (penalties for offences);section 197(1) and (2) (prosecution);section 198 (liability of directors etc);section 200 (guidance about PACE codes of practice);section 202 (proceedings in the First-tier Tribunal: contempt);section 203 (Tribunal Procedure Rules). General modification of references to the Data Protection Act 2018*

2 The provisions listed in paragraph 1 have effect as if—

- (a) references to the Data Protection Act 2018 or to a Part of that Act were references to the provisions of that Act or that Part as applied by these Regulations;

- (b) references to a particular provision of that Act were references to that provision as applied by these Regulations.

*Modification of section 142 (information notices)* 5

3 Section 142 has effect as if—

in subsection (1), for paragraphs (a) and (b) there were substituted—

“ “(a) require any person to provide the Commissioner with information or documents that the Commissioner reasonably requires for the purposes of determining whether that person has complied or is complying with the requirements of the PEC Regulations,

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15

(b) require a communications provider to provide the Commissioner with information or documents relating to another person’s use of an

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electronic communications  
network or electronic  
communications service for  
the purposes of determining  
whether that other person  
has complied or is complying  
with the requirements of  
the PEC Regulations, or

5

(c) require any person to provide  
the Commissioner with  
information or documents that  
the Commissioner reasonably  
requires for the purposes of  
investigating a suspected  
failure by another person to  
comply with the requirements  
of the PEC Regulations.” ”;

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15

(b) in subsection (2)(a), for “(b)  
(i) or (b)(ii)” there were  
substituted “(b) or (c)”;

20

after subsection (8) there  
were inserted—

“ “(8A) Subsections (8B) and (8C) apply  
if an information notice given

to a person under subsection  
(1)(b) or (c) contains—

(a) a statement that a duty of  
confidentiality applies in  
relation to the notice, and

5

(b) an explanation of the effects  
of subsections (8B) and (8C).

(8B) The person to whom the information  
notice is given, and any person  
employed or engaged for the purpose  
of that person's business, must  
not disclose the existence of the  
notice without reasonable excuse.

10

(8C) Subsection (8B) does not prevent—

(a) a disclosure to a person  
employed or engaged for  
the purpose of the business  
of the person to whom  
the notice is given,

15

(b) a disclosure made with  
the permission of the  
Commissioner (whether  
the permission is contained

20

in the information notice  
or otherwise), or

(c) a disclosure made for  
the purpose of obtaining  
legal advice.” ”;

5

(d) subsection (10) were omitted.

*Modification of section 143  
(information notices: restrictions)*

4 (1) Section 143 has effect as if  
subsection (1) were omitted.

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(2) In that section—

(a) subsections (3)(b) and (4)(b)  
have effect as if for “the data  
protection legislation” there were  
substituted “the PEC Regulations”;

15

(b) subsection (7)(a) has effect as if  
for “this Act” there were substituted  
“section 144, 148 or 148C or  
paragraph 15 of Schedule 15”;

(c) subsection (8) has effect as if for  
“this Act (other than an offence  
under section 144)” there were

20

substituted “section 148 or 148C  
or paragraph 15 of Schedule 15”.

*Modification of section 145 (information orders)*

- 5 Section 145(2)(b) has effect as if  
for “section 142(2)(b)” there were  
substituted “section 142(2)”. 5

*Modification of section 146  
(assessment notices)*

- 6 Section 146 has effect as if—
- (a) in subsection (1)— 10
- (i) for “a controller or  
processor” there were  
substituted “a person  
within subsection (1A)”; 15
- (ii) for “the controller or  
processor” there were  
substituted “the person”; 15
- (iii) for “the data protection  
legislation” there  
were substituted “the 20

requirements of the  
PEC Regulations”;

after subsection (1) there  
were inserted—

- “ (1A) A person is within this subsection if the person— 5
- (a) is a communications provider, or
  - (b) is engaged in any activity regulated by the PEC Regulations.” ”; 10
- (c) in subsection (2)—
- (i) for “controller or processor” there were substituted “person to whom it is given”; 15
  - (ii) in paragraph (h), for “the processing of personal data” there were substituted “any activity regulated by the PEC Regulations”; 20
  - (iii) in paragraph (i), for “process personal data on

- behalf of the controller”  
there were substituted “are  
involved in any such activity  
on behalf of the person to  
whom the notice is given”; 5
- (d) in subsection (3A), for  
“controller or processor” there  
were substituted “person”;
- (e) in subsection (7), for “controller  
or processor” there were 10  
substituted “person to whom  
the notice is given”;
- (f) in subsection (8)—
- (i) in paragraph (a), for  
“controller or processor” 15  
there were substituted  
“person to whom the  
notice is given”;
- (ii) in the words after  
paragraph (c), 20  
for “controller or  
processor” there were  
substituted “person”;
- (g) in subsection (9)—

- (i) in paragraph (a), for the words from “a controller” to “this Act” there were substituted “the person to whom the notice is given has failed or is failing to comply with the requirements of the PEC Regulations or that an offence under section 144, 148 or 148C or paragraph 15 of Schedule 15”; 5 10
- (ii) in paragraph (d), for “controller or processor” there were substituted “person”; 15
- (h) in subsection (10), for “controller or processor” there were substituted “person”;
- (i) subsection (11) were omitted; 20
- (j) in subsection (11A)—
- (i) for “controller or processor”, in the first place it occurs, there

were substituted “person to whom it is given”;

- (ii) for “controller or processor”, in the second place it occurs, there were substituted “the person”.

5

*Modification of section 146A (assessment notices: approval of person to prepare report)*

7 Section 146A has effect as if—

(a) in subsection (1), for “a controller or processor” there were substituted “a person (“P”)”;

10

(b) in subsection (2), for “The controller or processor” there were substituted “P”;

15

(c) in subsections (3) to (6), for “the controller or processor” (in each place) there were substituted “P”.

*Modification of section 147  
(assessment notices: restrictions)*

8 (1) Section 147 has effect as if subsections (5) and (6)(b) were omitted.

(2) In that section, subsections (2)(b) and (3)(b) have effect as if for “the data protection legislation” there were substituted “the PEC Regulations”. 5

*Modification of section 148A (interview notices)*

9 (1) Section 148A has effect as if— 10

(a) in subsection (1)—

(i) for “a controller or processor” there were substituted “a person”;

(ii) in paragraph (a), for “as described in section 149(2)” there were substituted “to comply with a requirement of the PEC Regulations”; 15

(iii) in paragraph (b), for “this Act” there were substituted “section 144, 20

148 or 148C or paragraph  
15 of Schedule 15”;

(b) in subsection (3)—

- (i) in paragraph (a), for “the controller or processor” 5  
there were substituted  
“the person mentioned  
in subsection (1)”;
- (ii) in paragraph (b), for “the controller or processor” 10  
there were substituted  
“that person”;
- (iii) in paragraph (c), for “the controller or processor” 15  
there were substituted  
“that person”.

*Modification of section 148B  
(interview notices: restrictions)*

- 10(1) Section 148B has effect as if 20  
subsections (8) and (9) were omitted.
- (2) In that section—

- (a) subsections (2)(b) and (3)(b) have effect as if for “the data protection legislation” there were substituted “the PEC Regulations”;
- (b) subsection (6)(a) has effect as if for “this Act” there were substituted “section 144, 148 or 148C or paragraph 15 of Schedule 15”;
- (c) subsection (7) has effect as if for “this Act (other than an offence under section 148C)” there were substituted “section 144 or 148 or paragraph 15 of Schedule 15”.

*Modification of section 149  
(enforcement notices)*

11(1) Section 149 has effect as if subsections (2) to (5A) and (7) to (9) were omitted.

(2) In that section—

(a) subsection (1) has effect as if—

- (i) for “as described in subsections (2), (3), (4), (5) or (5A)” there were

20

substituted “to comply with a requirement of the PEC Regulations”;

- (ii) for “sections 150 and 151” there were substituted “section 150”;

5

- (b) subsection (6) has effect as if the words “given in reliance on subsection (2), (3), (5) or (5A)” were omitted.

10

*Modification of section 150 (enforcement notices: supplementary)*

- 12(1) Section 150 has effect as if subsection (3) were omitted.

- (2) In that section, subsection (2) has effect as if the words “in reliance on section 149(2)” were omitted.

15

*Modification of section 152 (enforcement notices: restrictions)*

- 13 Section 152 has effect as if subsections (1), (2) and (4) were omitted.

20

*Modification of Schedule 15 (powers  
of entry and inspection)*

- 14(1) Schedule 15 has effect as if paragraph 3 were omitted.
- (2) Paragraph 1(1) of that Schedule (issue of warrants in connection with non-compliance and offences) has effect as if for paragraph (a) (but not the final “and”) there were substituted—
- “ (a) there are reasonable grounds for suspecting that—
- (i) a person has failed or is failing to comply with a requirement of the PEC Regulations, or
- (ii) an offence under section 144, 148, or 148C or paragraph 15 of this Schedule has been or is being committed,” ”.
- (3) Paragraph 2 of that Schedule (issue of warrants in connection with assessment notices) has effect as if—

- (a) in sub-paragraphs (1) and (2),  
for “controller or processor” there  
were substituted “person”;
  - (b) in sub-paragraph (2), for “the data  
protection legislation” there were  
substituted “the PEC Regulations”. 5
- (4) Paragraph 5 of that Schedule (content  
of warrants) has effect as if—
  - (a) in sub-paragraph (1)(c), for “the  
processing of personal data” 10  
there were substituted “an activity  
regulated by the PEC Regulations”;
  - (b) in sub-paragraph (2)(d), for the  
words from “controller or processor”  
to the end there were substituted 15  
“person mentioned in paragraph  
1(1)(a) has failed or is failing  
to comply with a requirement  
of the PEC Regulations”;
  - (c) in sub-paragraph (3)(a) and (d)— 20
    - (i) for “controller or processor”  
there were substituted

- “person mentioned in paragraph 2(1)”;
- (ii) for “the data protection legislation” there were substituted “the requirements of the PEC Regulations”. 5
- (5) Paragraph 11 of that Schedule (privileged communications) has effect as if, in sub-paragraphs (1)(b) and (2)(b), for “the data protection legislation” there were substituted “the PEC Regulations”. 10

*Modification of section 155 (penalty notices)*

- 15 Section 155 has effect as if— 15
- (a) in subsection (1)—
- (i) in paragraph (a), for “as described in section 149(2), (3), (4), (5) or (5A)” there were substituted “to comply with a requirement of the PEC Regulations”; 20

(ii) after paragraph (c),  
there were inserted “or

(d) has failed to comply  
with the prohibition in  
section 142(8B),”;

5

after subsection (1) there  
were inserted—

“ “(1A) But the Commissioner may not give a  
penalty notice to a person in respect  
of a failure to comply with regulation  
5A or 26A of the PEC Regulations.” ”;

10

for subsection (2) there  
were substituted—

“ “(2) When deciding whether to give  
a penalty notice to a person and  
determining the amount of the  
penalty, the Commission must  
have regard to the matters listed in  
subsection (3), so far as relevant.” ”;

15

(d) in subsection (3)—

20

(i) for “the controller or  
processor” (in each

- place) there were substituted “the person”;
- (ii) in paragraph (c), for the words from “data subjects” to the end there were substituted “subscribers or users”; 5
- (iii) in paragraph (d), for the words “in accordance with section 57, 66, 103 or 107” there were substituted “with a view to securing compliance with the requirements of the PEC Regulations”; 10 15
- (iv) paragraph (g) were omitted;
- (v) in paragraph (j), the words “or certification mechanism” were omitted;
- (e) subsection (4) were omitted; 20
- after subsection (4) there were inserted—
- “ (4A) If a penalty notice is given to a body

in respect of a failure to comply with any of regulations 19 to 24 of the PEC Regulations, the Commissioner may also give a penalty notice to an officer of the body if the Commissioner is satisfied that the failure—

5

(a) took place with the consent or connivance of the officer, or

(b) was attributable to any neglect on the part of the officer.

10

(4B) In subsection (4A)—

“body” means a body corporate or a Scottish partnership;

“officer”, in relation to a body, means—

15

(a) in relation to a body corporate—

(i) a director, manager, secretary or other similar officer of the body or any person purporting to act in such capacity, and

20

- (ii) where the affairs of the body are managed by its members, a member; or
- (b) in relation to a Scottish partnership, a partner or any person purporting to act as a partner.” ”; 5
- (g) subsections (6) to (8) were omitted.

*Modification of Schedule 16 (penalties)*

- 16 Schedule 16 has effect as if paragraphs 3(2)(b) and 5(2)(b) were omitted. 10

*Modification of section 156  
(penalty notices: restrictions)*

- 17(1) Section 156 has effect as if subsections (1), (2), (4)(b) and (5) were omitted. 15
- (2) In that section, subsection (3) has effect as if for the words from “controller” to “determined by or” there were substituted “penalty notice to a person who acts”. 20

*Modification of section 157  
(maximum amount of penalty)*

- 18 Section 157 has effect as if—
- (a) subsection (1) were omitted;
  - (b) in subsection (2)—
    - (i) for “Part 3 of this Act” there were substituted “the PEC Regulations”;
    - (ii) in paragraph (a), for the words from “section 35” to “or 78” there were substituted “regulation 5, 6, 7, 8, 14, 19, 20, 21, 21A, 21B, 22, 23 or 24”;
  - (c) subsections (3) and (4A) were omitted;
- after subsection (4A) there were inserted—
- “ (4B) In relation to an infringement of section 142(8B) of this Act, the maximum amount of the penalty that may be imposed by a penalty notice is the higher maximum amount.” ”

*Modification of section 159 (amount of penalties: supplementary)*

- 19 Section 159 has effect as if—
- (a) in subsection (1), the words “Article 83 of the UK GDPR and” were omitted; 5
  - (b) in subsection (2), the words “Article 83 of the UK GDPR,” and “and section 158” were omitted.

*Modification of section 160 (guidance) 10*

- 20 Section 160 has effect as if, in subsection (4)(f), for “controllers and processors” there were substituted “persons”.

*Modification of section 162 (rights of appeal)*

- 21 Section 162 has effect as if subsection (4) were omitted. 15

*Modification of section 163 (determination of appeals)*

- 22 Section 163 has effect as if subsection (6) were omitted. 20

*Modification of section 180 (jurisdiction)*

- 23(1) Section 180 has effect as if subsections (2)(b), (c), (d) and (e) and (3) were omitted.
- (2) Subsection (1) of that section has effect as if for “subsections (3) and (4)” there were substituted “subsection (4)”. 5

*Modification of section 181  
(interpretation of Part 6)*

- 24 Section 181 has effect as if the definition of “certification provider” were omitted. 10

*Modification of section 182  
(regulations and consultation)*

- 25 Section 182 has effect as if subsections (3), (4), (6), (8) to (12) and (14) were omitted. 15
- 26 Subsection (13) of that section has effect as if for “provision comes into force” there were substituted “coming into force of section 90 of the Data Protection and Digital Information Act 2023”. 20

*Modification of section 196  
(penalties for offences)*

27(1) Section 196 has effect as if subsections (3) to (5) were omitted.

(2) In that section— 5

(a) subsection (1) has effect as if the words “section 119 or 173 or” were omitted;

(b) subsection (2) has effect as if for “section 132, 144, 148, 148C, 170, 171 or 184” there were substituted “section 144, 148 or 148C”. 10

*Modification of section 200 (guidance about PACE codes of practice)*

28 Section 200 has effect as if, in subsection (1), for “this Act” there were substituted “section 144, 148 and 148C and paragraph 15 of Schedule 15”. 15

*Modification of section 202 (proceedings  
in the First-tier Tribunal: contempt)*

- 29 Section 202 has effect as if, in subsection (1)(a), for sub-paragraphs (i) and (ii) there were substituted “on an appeal under section 162”. 5

*Modification of section 203  
(tribunal procedure rules)*

- 30 Section 203 has effect as if—
- (a) in subsection (1), for paragraphs (a) and (b) there were substituted “the exercise of the rights of appeal conferred by section 162”; 10
  - (b) in subsection (2)—
    - (i) in paragraph (a), for “the processing of personal data” there were substituted “any activity regulated by the PEC Regulations”; 15
    - (ii) in paragraph (b), for “the processing of personal 20

data” there were substituted  
“any such activity”.

*Interpretation*

- 31 In this Schedule, “the PEC Regulations”  
means these Regulations.” 5

SCHEDULE 11 Section 105

REGISTERS OF BIRTHS AND DEATHS: MINOR AND  
CONSEQUENTIAL AMENDMENTS

**Part 1**

AMENDMENTS OF THE BIRTHS AND DEATHS 10  
REGISTRATION ACT 1953

- 1 The Births and Deaths Registration  
Act 1953 is amended as follows.
- 2 (1) Section 3A (registration of  
births of abandoned children) 15  
is amended as follows.
- (2) In subsection (5), for the words from  
“direct” to the end substitute “enter in the  
margin of the relevant register of births  
a reference to the re-registration of the 20

birth or, if the relevant register of births is in hard copy form, shall direct the officer having custody of that register to do so.”

(3) After that subsection insert—

“(6) In subsection (5) “the relevant register of births”, in relation to the re-registration of the birth of a child, means the register of births in which the entry relating to the child was previously made.” 5  
10

3 (1) Section 13 (registration of name of child or of alteration of name) is amended as follows.

(2) In subsection (1), for “the registrar or superintendent registrar having the custody of the register” substitute “the relevant registration officer for the register”. 15

(3) In subsection (1A), for “The registrar or superintendent registrar having custody of the register in question” substitute “The relevant registration officer”. 20

- (4) In subsection (1B), for “the registrar or superintendent registrar” substitute “the relevant registration officer”.
- (5) After subsection (2) insert—
- “(2A) In this section the “relevant registration officer” for a register means—
- (a) the registrar of births and deaths for the sub-district for which the register is or has been kept, or
- (b) the superintendent registrar for the district containing that sub-district.”
- 4 In Part 3 (general), the italic heading before section 25 becomes “*Registers, etc*”.
- 5 (1) Section 29 (correction of errors in registers) is amended as follows.
- (2) In subsection (3), for “the officer having the custody of the register” substitute “the appropriate registration officer”.

- (3) In subsection (3A)(b), for “the officer having the custody of the register” substitute “the appropriate registration officer”.
- (4) In subsection (3B)(b), for “the officer having the custody of the register” substitute “the appropriate registration officer”. 5
- (5) In subsection (4), for “the officer having the custody of the register” substitute “the appropriate registration officer for the register”. 10
- (6) After subsection (4) insert—
- “(5) In this section the “appropriate registration officer”, in relation to a register, means— 15
- (a) in the case of a register of live-births or of deaths in hard copy form, the superintendent registrar having custody of the register; 20

- (b) in the case of a register of live-births or of deaths not in hard copy form—
    - (i) the registrar of births and deaths for the sub-district for which the register is or has been kept, or 5
    - (ii) the superintendent registrar for the district containing that sub-district; 10
  - (c) in the case of a register of still-births, the Registrar General.”
- 6 In section 29A (alternative procedure for certain corrections), in subsection (4)—
- (a) for “the officer having custody of the register” substitute “the appropriate registration officer”; 15
  - (b) at the end insert—
    - ““Appropriate registration officer” has the same meaning as in section 29 of this Act.” 20

- 7 (1) Section 30 (searches of indexes kept by Registrar General) is amended as follows.
- (2) After subsection (1) insert—
- “(1ZA) The Registrar General shall cause 5  
the following indexes to be made and  
kept in the General Register Office—
- (a) an index of the entries in  
the registers kept under  
section 1 of this Act; 10
- (b) an index of the entries in  
the registers kept under  
section 15 of this Act.”
- (3) In subsection (2), after “certified  
copies” insert “or in the said 15  
registers (as the case may be)”.
- (4) In subsection (3)—
- (a) for “to certified copies of entries  
in” substitute “in relation to”;
- (b) for the words from “any such” 20  
to the end substitute “any  
register of still-births”.

8 In section 31 (searches of indexes kept by superintendent registrars), for subsection (1) substitute—

“(1) The superintendent registrar for each district shall cause the following indexes to be made—

5

(a) an index of the entries in the registers of live-births kept for the sub-districts within that district;

10

(b) an index of the entries in the registers of deaths kept for the sub-districts within that district.

(1A) The indexes must be kept with the other records of the register office for the district.”

15

9 For section 32 (searches in registers kept by registrars) substitute—

“**32 Obtaining copies of entries from registrars**

20

(1) Any person is entitled to obtain from a registrar for a sub-district,

at any time when the registrar's office is required to be open for the transaction of public business, a copy certified by the registrar of any entry in any register of births or register of deaths kept for that sub-district.

5

- (2) But subsection (1) does not apply in relation to any register of still-births except as the registrar may, with the consent of the Registrar General, in any particular case allow.”

10

10 (1) Section 33 (short certificate of birth) is amended as follows.

- (2) In subsection (1), for “the Registrar General, a superintendent registrar or a registrar” substitute “the appropriate registration officer”.

15

- (3) After subsection (1) insert—

“(1A) In subsection (1) the “appropriate registration officer” means—

20

- (a) in the case of a live-birth, the Registrar General, a

- superintendent registrar  
or a registrar;
- (b) in the case of a still-birth—
- (i) the Registrar General, or
- (ii) a registrar acting at the time of the registration of the still-birth or with the consent of the Registrar General.” 5
- (4) In subsection (2)—
- (a) for the words from “the records and registers” to “may be” substitute “the register in which the entry relating to the birth is made, or, in the case of the Registrar General, from the records in the Registrar General’s custody”; 10 15
- (b) for “any such records or registers” substitute “any register of births or in any such records”.

- 11 In section 33A (short certificate of death), in subsection (2), for the words from “the records and registers” to “may be” substitute “the register in which the entry relating to the death is made, or, in the case of the Registrar General, from the records in the Registrar General’s custody”. 5
- 12 In section 34 (entry in register as evidence of birth or death), in subsection (5), before “on which” insert “in or”. 10
- 13 (1) Section 34A (searches and records of information: additional provision) is amended as follows.
- (2) In subsection (1)— 15
- (a) after paragraph (a) insert—
- “(aa) to carry out, on request, a search to find out whether any of the registers kept under this Act contains a particular entry;” 20
- (b) in paragraph (b), after “copies” insert “or in such a register”.

- (3) In subsection (5), at the end insert “or in a register kept under this Act”.
- 14 In section 35 (offences relating to registers), in paragraph (b), after “deaths” insert “kept in hard copy form”. 5
- 15 In section 40 (sending and providing notices, information or other documents), omit “, return”.
- 16 In section 41 (interpretation), after subsection (3) insert— 10
- “(4) For the purposes of this Act a register is in hard copy form if it consists of a paper copy or similar form capable of being read with the naked eye.”

## Part 2

15

### AMENDMENTS OF OTHER LEGISLATION

#### *Registration Service Act 1953*

- 17 The Registration Service Act 1953 is amended as follows.

- 18 In section 10 (district register offices),  
in subsection (1), omit the words from  
“, and shall provide” to the end.
- 19 In section 12 (provision of register boxes),  
omit “registrar of births and deaths and”. 5
- 20 In section 13 (local schemes of  
organisation), in subsection (2),  
after paragraph (b) insert—
- “(ba) determining the equipment or  
facilities to be provided at those 10  
offices and stations by the  
council for the non-metropolitan  
county or metropolitan district;”.
- Public Records Act 1958*
- 21 In Schedule 1 to the Public Records 15  
Act 1958 (definition of public records),  
in paragraph 2(2)(b), after “adoptions,”  
insert “or to any other records held by  
the Registrar General of information  
entered in any register of births or deaths 20  
kept under any such enactment,”.

*Social Security Administration Act 1992*

- 22 In section 124 of the Social Security Administration Act 1992 (provisions relating to age, death and marriage), after subsection (5) insert— 5
- “(6) The reference in subsection (1) above to a register in the custody of a registrar or superintendent registrar includes, in relation to registers of births or deaths kept under the Births and Deaths Registration Act 1953, a reference to any such register kept for the registrar’s sub-district or (as the case may be) for a sub-district within the superintendent registrar’s district; and references in subsection (3) above to the custodian of the register are to be read accordingly.” 10 15

*Education Act 1996*

- 23 (1) Section 564 of the Education Act 1996 (certificates of birth and registrars’ returns) is amended as follows. 20

- (2) In subsection (1), for “the registrar having the custody of the register of births and deaths” substitute “the relevant registrar for the register”.
- (3) In subsection (3)— 5
- (a) for “A registrar” substitute “The relevant registrar for a register”;
- (b) for “any register of births and deaths in his custody” substitute “the register”. 10
- (4) In subsection (4)—
- (a) in the definition of “the appropriate fee”, for “the registrar having custody of the register concerned” substitute “the relevant registrar for a register”; 15
- (b) for the definition of “register of births and deaths” substitute—
- ““register” means a register of births or register of deaths kept under that Act,”;
- 20
- (c) at the end insert—

““the relevant registrar” for  
a register means—

(a) in the case of a register in  
hard copy form (within the  
meaning of the Births and  
Deaths Registration Act  
1953), the superintendent  
registrar having custody  
of the register;

5

(b) in the case of a register not  
in hard copy form (within  
the meaning of that Act)—

10

*the registrar of births and deaths for  
the sub-district for which the register is  
or has been kept, or the superintendent  
registrar for the district containing that sub-  
district.”Adoption and Children Act 2002*

15

24 In section 78 of the Adoption  
and Children Act 2002 (Adopted  
Children Register: searches and  
copies), in subsection (4)—

20

(a) in paragraph (a), omit  
“certified copies of”;

- (b) in paragraph (b), for “certified copies” (in the second place it occurs) substitute “registers”.

*Gender Recognition Act 2004*

- 25 The Gender Recognition Act 2004 is amended as follows. 5
- 26 (1) Section 10 (registration) is amended as follows.
- (2) In subsection (2), omit the “or” after paragraph (a) and after paragraph (b) insert “, or 10
- (c) an entry in a register kept under section 1 of the Births and Deaths Registration Act 1953,”.
- (3) For subsection (3) substitute— 15
- “(3) “The appropriate Registrar General” means—
- (a) in relation to a UK birth register entry of which a certified copy is kept by a Registrar General or which is in a register so kept, whichever Registrar 20

- General keeps that certified copy or that register;
- (b) in relation to a UK birth register entry in a register kept under section 1 of the Births and Deaths Registration Act 1953, the Registrar General for England and Wales. 5
- (3A) For the purposes of this section each of the following is a Registrar General— 10
- (a) the Registrar General for England and Wales;
- (b) the Registrar General for Scotland; 15
- (c) the Registrar General for Northern Ireland.”
- 27 In Part 1 of Schedule 3 (registration: England and Wales), in paragraphs 5(3) and 8(2), for “or (b)” substitute “, (b) or (c)”. 20

*Presumption of Death Act 2013*

- 28 In Schedule 1 to the Presumption of Death Act 2013 (Register of Presumed Deaths), in paragraph 7 (interpretation)—
- (a) after “means” insert “— 5
- (b) at the end insert “, or
- (b) the index kept in the General Register Office of such entries.”

## SCHEDULE 12 Section 106

## INFORMATION STANDARDS FOR HEALTH AND ADULT SOCIAL CARE IN ENGLAND 10

- 1 Part 9 of the Health and Social Care Act 2012 (health and adult social care services: information) is amended as follows. 15
- 2 Before section 250 insert—
- “Powers to publish standards”.*
- 3 (1) Section 250 (powers to publish information standards) is amended as follows. 20

- (2) In subsection (2), at the end insert “and includes, among other things, a standard relating to information technology or IT services used, or intended to be used, in connection with the processing of information (see section 250A)”. 5
- (3) In subsection (2B)(c)—
- (a) after “provision” insert “in, or in relation to, England”, and
- (b) omit “in England”. 10
- (4) In subsection (2B), at the end insert—
- “(e) a relevant IT provider.”
- (5) In subsection (3)—
- (a) after “provision” insert “in, or in relation to, England”, and 15
- (b) omit “in England”.
- (6) In subsection (7)—
- (a) in the opening words, for “section” substitute “Chapter”,
- (b) after the definition of “health care” insert— 20

“information technology” includes—

- (a) computers,
- (b) other devices whose uses include the processing of information by electronic means (“IT devices”), 5
- (c) parts, accessories and other equipment made or adapted for use in connection with computers or IT devices, 10
- (d) software and code made or adapted for use in connection with computers or IT devices, and
- (e) networks and other infrastructure (whether physical or virtual) used in connection with other information technology; 15

“IT service” means an information technology service, including any service (whether physical or virtual) which consists of, or is 20

provided in connection with, the development, making available, operation or maintenance of information technology;”,

(c) in the definition of “processing”, 5  
omit “and (14)”, and

(d) at the end insert—

““relevant IT provider” means a person involved in marketing, supplying, providing or 10  
otherwise making available—

(a) information technology,

(b) an IT service, or

(c) a service which consists of processing information using 15  
information technology,

whether for payment or free of charge, but only so far as the technology or service is used, or intended to be used, in connection with the provision in, or in relation to, 20  
England of health care or of adult social care.”<sup>4</sup> After section 250 insert—

**“250A Standards relating to information technology**

- (1) An information standard relating to information technology or IT services may, among other things, make provision about—
- (a) the design, quality, capabilities or other characteristics of such technology or services; 5
  - (b) contracts or other arrangements under which such technology or services are marketed, supplied, provided or otherwise made available. 10
- (2) An information standard may include technical provision about information technology or IT services, including provision about— 15
- (a) functionality;
  - (b) connectivity; 20
  - (c) interoperability;
  - (d) portability;

- (e) storage of, and access to, information;
    - (f) security of information.
  - (3) An information standard may make provision by reference to open standards or proprietary standards.” 5
- 5 (1) Section 251 (information standards: procedure etc) is amended as follows.
- (2) In the heading omit “Information standards:”. 10
  - (3) For subsection (3) substitute—
    - “(3) The power under section 250(1) may be exercised by—
      - (a) adopting an information standard prepared or published by another person, including as it has effect from time to time, or 15
      - (b) making provision by reference to an international agreement or another document, including as it has effect from time to time.” 20

6 After section 251 insert—

*“Compliance with standards”.*

7 For the heading of section 251ZA  
(information standards: compliance)  
substitute “Monitoring compliance”.

5

8 After that section insert—

**“251ZB Notice requesting compliance by  
relevant IT providers**

(1) If the Secretary of State has  
reasonable grounds to suspect that a  
relevant IT provider is not complying  
with an information standard  
which applies to the provider, the  
Secretary of State may give the  
provider a written notice which—

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(a) identifies the standard  
in question,

(b) sets out the Secretary of  
State’s grounds for suspecting  
that the provider is not  
complying with the standard,

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- (c) asks the provider to comply with the standard within a period specified in the notice,
  - (d) asks the provider, within a period specified in the notice, to provide evidence to the Secretary of State's satisfaction that the provider is complying with the standard, and 5
  - (e) if the Secretary of State considers it appropriate, sets out the steps that the Secretary of State considers the provider must take, within a period specified in the notice, in order to comply with the standard. 10 15
- (2) A period specified for the purposes of subsection (1)(c), (d) or (e) must be a period of at least 28 days beginning with the day on which the notice is given. 20
- (3) The Secretary of State may, by giving the relevant IT provider a further

written notice, vary or revoke a notice given under subsection (1).

## **251ZC Public censure of relevant IT providers**

- (1) If the Secretary of State has reasonable grounds to suspect that a relevant IT provider is not complying with an information standard which applies to the provider, the Secretary of State may publish a statement to that effect. 5 10
- (2) The statement may include the text of a notice given to the provider under section 251ZB.
- (3) Before publishing a statement under this section, the Secretary of State must give the relevant IT provider— 15
- (a) a copy of the terms of the proposed statement, and
  - (b) an opportunity to make representations about the decision to publish a statement and the terms of the statement. 20

- (4) If, after considering any representations, the Secretary of State decides to publish the statement, the Secretary of State must inform the relevant IT provider before publishing it. 5

**251ZD Exercise of functions of Secretary of State by other persons**

- (1) The Secretary of State may—
- (a) direct a public body to exercise some or all of the functions listed in subsection (3), and 10
  - (b) give the public body directions about the exercise of those functions, including directions about the processing of information that the body obtains in exercising those functions. 15
- (2) The Secretary of State may make arrangements for a person prescribed by regulations under this subsection 20

to exercise some or all of the functions listed in subsection (3).

(3) Those functions are—

- (a) the Secretary of State's functions under section 251ZA, so far as they relate to relevant IT providers, and
- (b) the Secretary of State's functions under section 251ZB.

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(4) Arrangements under subsection (2) may—

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- (a) provide for the Secretary of State to make payments to the person, and
- (b) make provision as to the circumstances in which such payments are to be repaid to the Secretary of State.

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(5) Section 304(9) applies in relation to the power to make arrangements under subsection (2) as it applies

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to a power of the Secretary of State to give directions under this Act.

*Accreditation*

<b>251ZE</b>	<b>Accreditation of information technology etc</b>	<b>5</b>
(1)	Regulations may make provision for the establishment and operation of a scheme for the accreditation of information technology and IT services so far as used, or intended to be used, in connection with the provision in, or in relation to, England of health care or of adult social care.	10
(2)	The regulations may provide for the scheme to be established and operated by a person specified in the regulations (“the operator”).	15
(3)	The regulations may, among other things, confer power on the operator—	
	(a) to establish the procedure for accreditation under the scheme,	20

- (b) to set the criteria for accreditation under the scheme (“the accreditation criteria”),
  - (c) to keep an accreditation under the scheme under review, and 5
  - (d) to charge a reasonable fee in respect of an application for accreditation.
- (4) The regulations may, among other things, make provision requiring the operator— 10
  - (a) to set some or all of the accreditation criteria by reference to information standards, 15
  - (b) to publish details of the scheme, including the accreditation criteria,
  - (c) to provide for the review of a decision to refuse an application for accreditation, and 20

- (d) to provide advice to applicants for accreditation with a view to ensuring that the accreditation criteria are met.”

SCHEDULE 13 Section 107 5

THE INFORMATION COMMISSION

*Schedule 12A to the 2018 Act*

- 1 In the 2018 Act, after  
Schedule 12 insert—

“SCHEDULE 12A Section 114A 10

THE INFORMATION COMMISSION

*Status*

- 1 (1) The Commission is not to be regarded—
- (a) as a servant or agent  
of the Crown, or 15
- (b) as enjoying any status, immunity  
or privilege of the Crown.

- (2) The Commission's property is not to be regarded—
- (a) as property of the Crown, or
  - (b) as property held on behalf of the Crown.

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*Number of members*

2 (1) The number of members of the Commission is to be determined by the Secretary of State.

- (2) That number must not be—
- (a) less than 3, or
  - (b) more than 14.

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(3) The Secretary of State may by regulations substitute a different number for the number for the time being specified in sub-paragraph (2)(b).

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(4) Regulations under this paragraph are subject to the negative resolution procedure.

*Membership: general*

- 3 (1) The Commission is to consist of—
- (a) the non-executive members, and
  - (b) the executive members.
- (2) The non-executive members are— 5
- (a) a chair appointed by His Majesty by Letters Patent on the recommendation of the Secretary of State, and
  - (b) such other members as the Secretary of State may appoint. 10
- (3) The executive members are—
- (a) a chief executive appointed by the non-executive members or in accordance with paragraph 24, and 15
  - (b) such other members, if any, as the non-executive members may appoint.
- (4) The non-executive members must consult the Secretary of State before appointing the chief executive. 20

- (5) The non-executive members must consult the chief executive about whether there should be any executive members within sub-paragraph (3)(b) and, if so, how many there should be. 5
- (6) The Secretary of State may by direction set a maximum and a minimum number of executive members.
- (7) The Commission may appoint one of the non-executive members as a deputy to the chair. 10

*Membership: non-executive members to outnumber executive members*

- 4 The Secretary of State must exercise the powers conferred on the Secretary of State by paragraphs 2 and 3 so as to secure that the number of non-executive members of the Commission is, so far as practicable, at all times greater than the number of executive members. 15 20

*Membership: selection on merit etc*

- 5 (1) The Secretary of State may not recommend a person for appointment as the chair of the Commission unless the person has been selected on merit on the basis of fair and open competition. 5
- (2) A person may not be appointed as a member of the Commission unless the person has been selected on merit on the basis of fair and open competition. 10

*Membership: conflicts of interests*

- 6 (1) Before—
- (a) recommending a person for appointment as the chair of the Commission, or 15
- (b) appointing a person as a non-executive member of the Commission,
- the Secretary of State must be satisfied that the person does not have a conflict of interest. 20

- (2) The Secretary of State must check from time to time that none of the non-executive members has a conflict of interest.
- (3) The Secretary of State may require a non-executive member to provide whatever information the Secretary of State considers necessary for the purpose of checking that the member does not have a conflict of interest. 5  
10
- (4) A non-executive member who is required to provide information under sub-paragraph (3) must provide it within such period as may be specified by the Secretary of State. 15
- (5) In this Schedule, “conflict of interest”, in relation to a person, means a financial or other interest which is likely to affect prejudicially the discharge by the person of the person’s functions as a member of the Commission. 20

*Tenure of the chair*

- 7 (1) The chair of the Commission holds and vacates office in accordance with the terms of the chair's appointment, subject to the provisions of this paragraph. 5
- (2) The chair must be appointed for a term of not more than 7 years.
- (3) On the recommendation of the Secretary of State, His Majesty may by Letters Patent extend the term of the chair's appointment but not so the term as extended is more than 7 years. 10
- (4) A person cannot be appointed as the chair more than once.
- (5) The chair may be relieved from office by His Majesty at the chair's own request. 15
- (6) The chair may be removed from office by His Majesty on an Address from both Houses of Parliament.
- (7) No motion is to be made in either House of Parliament for such an 20

Address unless the Secretary of State has presented a report to that House stating that the Secretary of State is satisfied that—

- (a) the chair is guilty of serious misconduct, 5
- (b) the chair has a conflict of interest (see paragraph 6(5)),
- (c) the chair has failed to comply with paragraph 6(4), or 10
- (d) the chair is unable, unfit or unwilling to carry out the chair's functions.

*Tenure of deputy chair*

- 8 (1) A deputy chair of the Commission may resign that office by giving written notice to the Commission. 15
- (2) A deputy chair of the Commission ceases to hold that office on ceasing to be a non-executive member of the Commission. 20

- (3) A deputy chair of the Commission may be removed from that office by the Commission.

*Tenure of the other non-executive members*

- 9 (1) This paragraph applies to a non-executive member of the Commission appointed by the Secretary of State. 5
- (2) The member holds and vacates office in accordance with the terms of their appointment, subject to the provisions of this paragraph. 10
- (3) The member must be appointed for a term of not more than 7 years.
- (4) The Secretary of State may extend the term of the member's appointment but not so that the term as extended is more than 7 years. 15
- (5) The Secretary of State may not appoint the member as a non-executive member of the Commission on a subsequent occasion. 20

- (6) The member may resign from office by giving written notice to the Secretary of State and the Commission.
- (7) The Secretary of State may remove the member from office by written notice if satisfied that—
- (a) the member is guilty of serious misconduct,
  - (b) the member has a conflict of interest (see paragraph 6(5)),
  - (c) the member has failed to comply with paragraph 6(4), or
  - (d) the member is unable, unfit or unwilling to carry out the member's functions.
- (8) At the time of removing the member from office the Secretary of State must make public the decision to do so.
- (9) The Secretary of State must—
- (a) give the member a statement of reasons for the removal, and

(b) if asked to do so by the member, publish the statement.

*Remuneration and pensions of non-executive members*

- 10(1) The Commission may pay to the non-executive members of the Commission such remuneration and allowances as the Secretary of State may determine. 5
- (2) The Commission may pay, or make provision for paying, to or in respect of the non-executive members of the Commission, such sums by way of pensions, allowances or gratuities (including pensions, allowances or gratuities paid by way of compensation in respect of loss of office) as the Secretary of State may determine. 10 15
- (3) The Commission may make a payment to a person of such amount as the Secretary of State may determine where— 20

- (a) the person ceases to be a non-executive member of the Commission otherwise than on the expiry of the person's term of office, and 5
- (b) it appears to the Secretary of State that there are special circumstances which make it appropriate for the person to receive compensation.

*Executive members: terms and conditions* 10

- 11(1) The executive members of the Commission are to be employees of the Commission.
- (2) The executive members are to be employed by the Commission on such terms and conditions, including those as to remuneration, as the non-executive members of the Commission may determine. 15
  - (3) The Commission must— 20
    - (a) pay to or in respect of the executive members of the Commission

- such pensions, allowances or gratuities (including pensions, allowances or gratuities paid by way of compensation in respect of loss of office) as the non-executive members of the Commission may determine, and
- (b) provide and maintain for them such pension schemes (whether contributory or not) as the non-executive members of the Commission may determine.

*Other staff: appointment, terms and conditions*

- 12(1) The Commission may—
- (a) appoint other employees, and
- (b) make such other arrangements for the staffing of the Commission as it considers appropriate.
- (2) In appointing an employee, the Commission must have regard to the principle of selection on merit on the basis of fair and open competition.

- (3) Employees appointed by the Commission are to be appointed on such terms and conditions, including those as to remuneration, as the Commission may determine. 5
- (4) The Commission may—
- (a) pay to or in respect of those employees such pensions, allowances or gratuities (including pensions, allowances or gratuities paid by way of compensation in respect of loss of employment) as the Commission may determine, and 10
- (b) provide and maintain for them such pension schemes (whether contributory or not) as the Commission may determine. 15

### *Committees*

- 13(1) The Commission may establish committees. 20

- (2) A committee of the Commission may consist of or include persons who are neither members nor employees of the Commission.
- (3) But a committee of the Commission to which functions are delegated under paragraph 14(1)(c) must include at least one person who is either a member or an employee of the Commission. 5
- (4) Where a person who is neither a member nor an employee of the Commission is a member of a committee of the Commission, the Commission may pay to that person such remuneration and expenses as it may determine. 10 15

*Delegation of functions*

- 14(1) The Commission may delegate any of its functions to—
- (a) a member of the Commission, 20
  - (b) an employee of the Commission, or
  - (c) a committee of the Commission.

- (2) A function is delegated under subparagraph (1) to the extent and on the terms that the Commission determines.
- (3) A committee of the Commission may delegate any function delegated to it to a member of the committee. 5
- (4) A function is delegated under subparagraph (3) to the extent and on the terms that the committee determines.
- (5) The power of a committee of the Commission to delegate a function, and to determine the extent and terms of the delegation, is subject to the Commission's power to direct what a committee established by it may and may not do. 10 15
- (6) The delegation of a function by the Commission or a committee of the Commission under this paragraph does not prevent the Commission or the committee from exercising that function. 20

*Advice from committees*

- 15 The Commission may require a committee of the Commission to give the Commission advice about matters relating to the discharge of the Commission's functions. 5

*Proceedings*

- 16(1) The Commission may make arrangements for regulating—
- (a) its own procedure, and 10
  - (b) the procedure of a committee of the Commission.
- (2) The non-executive members of the Commission may by majority make arrangements for regulating the procedure for the carrying out of the separate functions which are conferred on them under this Schedule. 15
- (3) Arrangements under this paragraph may include arrangements as to quorum and the making of decisions by a majority. 20

(4) The Commission must publish arrangements which it makes under this paragraph.

(5) This paragraph is subject to paragraph 18.

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*Records of proceedings*

17 The Commission must make arrangements for the keeping of proper records of—

(a) its proceedings,

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(b) the proceedings of a committee of the Commission,

(c) the proceedings at a meeting of the non-executive members of the Commission,

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(d) anything done by a member or employee of the Commission under paragraph 14(1), and

(e) anything done by a member of a committee of the Commission under paragraph 14(3).

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*Disqualification for acting in  
relation to certain matters*

- 18(1) This paragraph applies if—
- (a) a member of the Commission has a direct or indirect interest in a matter falling to be considered at a meeting of the Commission, 5
  - (b) a non-executive member of the Commission has a direct or indirect interest in a matter falling to be considered at a meeting of the non-executive members, or 10
  - (c) a member of a committee of the Commission has a direct or indirect interest in a matter falling to be considered at a meeting of the committee. 15
- (2) The member with the interest must declare it.
- (3) The declaration must be recorded in the minutes of the meeting. 20

- (4) The member with the interest may not take part in a discussion or decision at the meeting relating to the matter, unless—
- (a) in the case of a meeting of the Commission, the other members of the Commission who are present have resolved unanimously that the interest is to be disregarded, 5
  - (b) in the case of a meeting of the non-executive members, the other non-executive members who are present have so resolved, or 10
  - (c) in the case of a meeting of a committee, the other members of the committee who are present have so resolved in the manner authorised by the Commission. 15
- (5) In giving authorisation for the purposes of sub-paragraph (4)(c), the Commission must secure that a resolution for those purposes does not allow a member to take part in a discussion or decision at a meeting of a committee 20

to which functions are delegated under paragraph 14(1)(c) unless the number of other members of the committee in favour of the resolution—

- (a) is not less than two thirds of those who are both present and entitled to vote on the resolution, and 5
- (b) is not less than its quorum.

- (6) For the purposes of this paragraph, a notification given at or sent to a meeting of the Commission that a person— 10
  - (a) is a member of a company or firm, and
  - (b) is to be regarded as interested in any matter involving that company or firm, 15

is to be regarded as compliance with sub-paragraph (2) in relation to any such matter for the purposes of that meeting and subsequent meetings of the Commission, of the non-executive members or of a committee. 20

- (7) For the purposes of this paragraph, a notification given at or sent to a meeting of the non-executive members of the Commission or of a committee of the Commission that— 5
- (a) a person is a member of a company or firm, and
- (b) is to be regarded as interested in any matter involving that company or firm, 10
- is to be regarded as compliance with sub-paragraph (2) in relation to any such matter for the purposes of that meeting and subsequent meetings of the non-executive members or (as the case may be) of the committee. 15
- (8) A notification described in sub-paragraph (6) or (7) remains in force until it is withdrawn.
- (9) A person required to make a declaration for the purposes of this paragraph in relation to any meeting— 20

- (a) is not required to attend the meeting, but
- (b) is to be taken to have complied with the requirements of this paragraph if the person takes reasonable steps to secure that notice of the person's interest is read out, and taken into consideration, at the meeting in question.

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*Validity of proceedings*

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19(1) The validity of proceedings of the Commission, of the non-executive members of the Commission or of a committee of the Commission is not affected by—

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- (a) a vacancy in the membership of the Commission or of the committee,
- (b) a defect in the appointment of a member of the Commission,
- (c) a failure of the Secretary of State to comply with the requirements of paragraph 4, or

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(d) a failure to comply with arrangements under paragraph 16 or with a requirement under paragraph 18.

- (2) Nothing in sub-paragraph (1)(d) validates proceedings of a meeting which is inquorate unless it is inquorate by reason only of a matter within sub-paragraph (1)(b) or (c). 5

*Money* 10

- 20 The Secretary of State may make payments to the Commission.

*Fees etc and other sums*

- 21(1) All fees, charges, penalties and other sums received by the Commission in carrying out its functions are to be paid to the Secretary of State. 15
- (2) Sub-paragraph (1) does not apply where the Secretary of State otherwise directs.

- (3) Any sums received by the Secretary of State under this paragraph are to be paid into the Consolidated Fund.

### *Accounts*

- 22(1) The Commission must keep proper accounts and proper records in relation to them. 5
- (2) The Commission must prepare a statement of accounts in respect of each financial year in the form specified by the Secretary of State. 10
- (3) The Commission must send a copy of each statement of accounts to the Secretary of State and the Comptroller and Auditor General before the end of August next following the financial year to which the statement relates. 15
- (4) The Comptroller and Auditor General must—
- (a) examine, certify and report on the statement of accounts, and 20

- (b) send a copy of the certified statement and the report to the Secretary of State.
- (5) The Secretary of State must lay before Parliament each document received under sub-paragraph (4)(b). 5
- (6) In this paragraph “financial year” means—
  - (a) the period beginning with the date on which the Commission is established and ending with the 31 March following that date, and 10
  - (b) each successive period of 12 months.
- Authentication of seal and presumption of authenticity of documents* 15
- 23(1) The application of the Commission’s seal must be authenticated by the signature of—
  - (a) the chair of the Commission, or 20

- (b) another person authorised for that purpose by the Commission.
- (2) A document purporting to be duly executed under the Commission's seal or signed on its behalf— 5
- (a) is to be received in evidence, and
- (b) is to be taken to be executed or signed in that way, unless the contrary is shown.
- (3) This paragraph does not extend to Scotland. 10

*Transitional provision: interim chief executive*

- 24(1) The first chief executive of the Commission is to be appointed by the chair of the Commission. 15
- (2) Before making the appointment the chair must consult the Secretary of State.
- (3) The appointment must be for a term of not more than 2 years.

- (4) The chair may extend the term of the appointment but not so the term as extended is more than 2 years.
- (5) For the term of appointment, the person appointed under sub-paragraph (1) is “the interim chief executive”. 5
- (6) Until the expiry of the term of appointment, the powers conferred on the non-executive members by paragraph 11(2) and (3) are exercisable in respect of the interim chief executive by the chair (instead of by the non-executive members). 10
- (7) In sub-paragraphs (5) and (6), the references to the term of appointment are to the term of appointment described in sub-paragraph (3), including any extension of the term under sub-paragraph (4). 15

*Interpretation*

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25 In this Schedule—

- (a) references to pensions, allowances or gratuities include references to any similar benefits provided on death or retirement, and
- (b) references to the payment of pensions, allowances or gratuities to or in respect of a person include references to the making of payments towards the provision of pensions, allowances or gratuities to be paid to or in respect of a person.”

*Transitional provision*

- 2 (1) This paragraph applies to the person who holds the office of Information Commissioner immediately before the day on which this Schedule comes into force.
- (2) The person is to be treated as having been appointed as the chair of the Information Commission for a term that expires at the time the person would cease to hold the office of

Information Commissioner but for the abolition of that office by section 108.

- (3) The term for which the person is treated as having been appointed as the chair of the Information Commission may not be extended under paragraph 7(3) of Schedule 12A to the 2018 Act so that the term as extended expires after the end of the period of 7 years beginning with the day the person began to hold the office of Information Commissioner.

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# **Data Protection and Digital Information (No. 2) Bill**

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[AS AMENDED IN COMMITTEE]

A

**BILL**

TO

Make provision for the regulation of the processing of information relating to identified or identifiable living individuals; to make provision about services consisting of the use of information to ascertain and verify facts about individuals; to make provision about access to customer data and business data; to make provision about privacy and electronic communications; to make provision about services for the provision of electronic signatures, electronic seals and other trust services; to make provision about the disclosure of information to improve public service delivery; to make provision for the implementation of agreements on sharing information for law enforcement purposes; to make provision about the keeping and maintenance of registers of births

and deaths; to make provision about information standards for health and social care; to establish the Information Commission; to make provision about oversight of biometric data; and for connected purposes.

*Presented by Secretary Michelle Donelan  
supported by Secretary Suella Braverman,  
Secretary Steve Barclay, Secretary Kemi  
Badenoch, George Freeman, Julia Lopez, Paul  
Scully and Alex Burghart*

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